RENTAL HOUSING COMMISSION

SECOND NOTICE OF PROPOSED RULEMAKING

Pursuant to the authority set forth in § 202(a)(1) of the Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code § 42-3502.02(a)(1) (2012 Repl.)) ("Act"), the Rental Housing Commission ("Commission") hereby gives notice of the intent to adopt the following rules related to the Rent Stabilization Program of the Act, registration requirements under the Act, requirements for notices to vacate a rental unit covered by the Act, other tenant rights provided by the Act, and procedures used by the Commission and the Rental Accommodations Division of the Department of Housing and Community Development ("RAD") to processes petitions and adjudicate cases arising under the Act.

The proposed rulemaking would amend all of the implementing rules under the Act in Title 14 (Housing) of the District of Columbia Municipal Regulations ("DCMR"), Chapters 38 through 44.

I. Purposes

The Commission published a notice of proposed rulemaking on August 2, 2019 (66 DCR 9813) ("First Proposed Rulemaking"), which identified six core purposes for reissuing all of the rules that implement the Act: (1) to implement statutory changes that determine the lawful rents for units covered by rent stabilization; (2) to implement and clarify the roles of the RAD and the Office of Administrative Hearings ("OAH") due to the transfer of the evidentiary hearing function; (3) to implement and conform to numerous other statutory changes enacted since the Commission's last rulemaking; (4) to codify and conform the rules to legal standards that are articulated in decisions of the Commission and the District of Columbia Court of Appeals ("DCCA"); (5) to update and improve operations and procedures of the Commission and RAD; and (6) to clarify language and to increase specificity in the rules. Those purposes remain the same in this proposed rulemaking. Except as stated with respect to the revisions below, the Commission incorporates the legal reasoning stated in the preamble to the First Proposed Rulemaking in this proposed rulemaking as well.

II. Comments Received

The First Proposed Rulemaking included a 90-day public notice and comment period, ending on October 31, 2019. During that time, the Commission received extensive comments from several organizations and individuals, generally advocating for the interests of either tenants or housing providers.

The majority of comments addressed Chapter 42, the rules implementing the Rent Stabilization Program, and those comments were particularly focused on the various terms used to regulate "rent" or the "rent charged," the timing of rent increases, and the processes and standards for approving voluntary agreements. The Commission has published copies of all comments received on its website, at https://rhc.dc.gov/page/rental-housing-act-and-regulations. All parties wishing to comment on this proposed rulemaking are encouraged to review the previously-received comments and to reply regarding the Commission's proposed incorporation of any recommended changes.

III. Major Revisions

This second proposed rulemaking includes changes based on public comments received on the First Proposed Rulemaking and the Commission's further review, in cooperation with interagency partners at RAD and OAH. The following list identifies many of the significant and substantial revisions based on public comments, as well as a number of significant proposed changes that the Commission does not agree with. Although this list is not exhaustive, the examples provided are intended to broadly explain the Commission's approach and reasoning.

Chapter 38 (Rental Housing Commission Operations & Procedures)

- One comment suggested that the Commission should revise its briefing and hearing schedule for appeals in order to provide a better opportunity for parties to present their arguments. The commenters noted that the current rules do not appear to comply with the statutory, 30-day limit for the Commission to decide a case, which is effectively impossible to meet for a variety of reasons. The Commission agrees, and the revised rules at §§ 3802.7-3802.15 and 3815 now provide that a reasonable schedule for briefing and oral argument that will be set by order in each case. Because the 30-day time limit is of the kind that the DCCA has described as "directory rather than mandatory," *Hughes v. D.C. Dep't of Emp't Servs.*, 498 A.2d 567, 571 n.8 (D.C. 1985) (citing *Chapin Street Joint Venture v. District of Columbia Rental Housing Comm'n*, 466 A.2d 414, 416 n.1 (D.C. 1983)), these rules will provide standards for the exercise of the Commission's procedural discretion in the inevitable situation where the statutory deadline has been exceeded before any action is taken on a case. The revised rules are designed to give unrepresented parties a fair chance of presenting their arguments, and therefore, as with the current rules, do not require a brief. Further, the revised rules provide that oral argument of a case may be waived if all parties agree.

- One comment suggested that the Commission should not attempt to supersede prior decisions of the DCCA with respect to stays of OAH decisions pending appeal. As the Commission alluded to in the preamble to its First Proposed Rulemaking, the current state of the law under decisions such as *Strand v. Frenkel*, 500 A.2d 1368 (D.C. 1985), and *Hanson v. District of Columbia Rental Hous. Comm'n*, 584 A.2d 592 (D.C. 1991), has been confusing for parties because some OAH orders are not effective while an appeal is pending, but some are. The Commission originally proposed a uniform rule of an automatic stay. The commenters recommended that the Commission follow the DCCA's interpretation of the Act and the legal effect of administrative orders. The Commission agrees that the better course is to conform its rules to the present state of the case law, rather than create further uncertainty. Sections 3805 and 3806, and various cross-references to those sections, have been revised accordingly.

- One set of comments addressed the Commission's rules in § 3808 governing Commission-initiated reviews, noting generally that the process is somewhat unusual for an appellate tribunal. The Commission agrees in principle, but the authority for *sua sponte* review is provided in § 216(h) of the Act (D.C. Official Code § 42-3502.16(h)). Accordingly, some rules should be set down to manage the process. The revised rules bring the briefing and argument process in line with the revisions to § 3802. Although

it may be desirable to have clearer guidance for when the Commission might initiate a review on its own, the power to do so would most likely only be used in very unusual, unforeseen circumstances. Accordingly, the revised rules do not include any substantive constraints on when the Commission can exercise its discretion to initiate a review.

- Similarly, one comment suggested there is no reason for the rules governing the Commission's issuance of subpoenas. Again, because this authority is provided by statute, the Commission will keep the rules in place for how to exercise it, although it is clear that it should not and would not be used in the course of an appeal, as it would conflict with the rule against taking new evidence in § 3807.

- One set of comments suggested that the Commission revise its rules, at § 3812 (and the corresponding RAD rules, at § 3918), to better reflect the DCCA's rules on the authorized practice of law and who may appear in a representative capacity for a party. The Commission agrees and has made a number of revisions in those sections and clarified that the DCCA's rules control in the event of a conflict.

- Two commenters suggested revisions to the rules for calculating attorney's fees in § 3825.12. The Commission agrees in principle that the calculation should be done in accordance with standards applied by the DCCA in similar fee-shifting cases. As to the use of the "USAO" (or "Laffey") matrix, this is incorporated in the consideration of "prevailing market rates in the District of Columbia" under (a)(2)(C), for finding the lodestar amount. As to the use of a 13th factor in making adjustments to the lodestar, as under the Commission's current rules, the majority of case law identifies only 12 factors, while the failure to prevail on all issues is incorporated into the lodestar determination of the hours reasonably expended in (a)(1)(C).

- One commenter suggested that the rules on settlements of appeals should require a housing provider to file notice with the RAD when a settlement agreement results in a rent adjustment. As reflected in the proposed revisions to Chapter 42, the Commission agrees that any rent increase or decrease should be promptly filed with RAD, and § 3829.11 is revised accordingly.

- One commenter suggested that the title "Clerk" cannot be used because it conflicts with the authority of the District of Columbia Courts. "Clerk of Court" is a job title on the Commission's staff and has no bearing on the authority of the Clerk of Court in any other branch of government.

- Nearly all commenters suggested revisions to some of the definitions in § 3899, particularly as the defined terms relate to Chapter 42. Those comments are discussed below.

Chapter 39 (Rental Accommodations Division)

- Several commenters suggested revisions to § 3908 regarding the scope of proceedings before the Rent Administrator. This issue is best resolved by the Office of

Administrative Hearings, which has its own rules for expanding the scope of a matter. Nonetheless, the Rent Administrator may have a more complete picture of the situation and issues around any particular petition or set of petitions, and therefore could provide useful information to OAH for managing its docket. As an implementation matter, RAD may consider including a space on the tenant petition form to request an expanded scope. However, OAH's rules do not provide for litigation on a class action basis, so it does not appear that the Commission could or should permit the scope of proceedings to be expanded beyond a single housing accommodation.

Chapter 41 (Coverage and Registration)

- Several commenters addressed the rules in § 4101.6 governing notice to tenants of the filing of registration forms with RAD.

  Two commenters addressed the timing of notice. The Commission agrees that the timing of the notice should be based on RAD's issuance of a registration or claim of exemption number, rather than the filing; that way, tenants will receive only a complete copy of the form with all information, and if any defects are discovered before the number is issued, notice will only be required once, after the defects are corrected. The current rule requiring "simultaneous" notice with the filing of a registration is confusing and difficult to follow in practice and does not provide any meaningful benefit in terms of keeping tenants informed of changes, as opposed to a later, more complete copy with a registration/exemption number.

  Two comments addressed the location of public posting. One suggested that posting be required in each building of a multi-building complex. While this may make sense, the Commission believes registration posting requirements should be in harmony with the basic business license posting requirements issued by the Department of Consumer and Regulatory Affairs. The revised rule borrows the language of 14 DCMR § 200.4, but unfortunately that rule is vague on this point. The Commission will welcome an increased specificity in the future and will update § 4101.6 to keep consistency between the two rules. Another comment addressed the requirement to post "conspicuously." This rule in its current and revised form matches the requirement from § 200.4; while it is subject to interpretation, the wide variety of physical structures in the District, from single-unit buildings to multi-building complexes, makes greater specificity impractical and requires case-by-case evaluation.

  Two commenters addressed the rules for notice by service on tenants in lieu of public posting. This rule implements § 205(h)(2) of the Act (D.C. Official Code § 42-3502.05(h)(2)), which requires public posting or allows service by mail on tenants in a single-unit housing accommodation. This rule, again contemplating the wide variety of physical structures in the District, expands that statutory alternative to the situation where no suitable location may exist in a multi-unit housing accommodation. Although the Commission can fill in situations not apparently contemplated by the statute, it is otherwise bound to limit service to mailing, or personal service as a reasonable alternative without meaningful difference, when public posting is not possible.

- Two commenters addressed the process for claiming an exemption under § 205(a)(1) of the Act (D.C. Official Code § 42-3502.05(a)(1)) when the exemption is based on a tenant-specific rent subsidy. The Commission agrees that this process should be clarified and should ensure a clear paper trail. Accordingly, the revised rules contain a new provision at § 4106.11 that requires a unit to be registered in accordance with the whole housing accommodation and, consistent with current RAD practice, for an Amended Registration Form to be used to claim the exemption for particular units with subsidies. Another Amended Registration form should be used on the termination of the exemption to show the computation of the legal, stabilized rent for the next tenant.

- The first proposed rules included provisions throughout that would split the current, single "Registration/Claim of Exemption" form into two separate forms for a housing provider to use, depending what status they claim. On further consultation with RAD, the revised rules return to a single registration form to avoid creating a potentially confusing period of recordkeeping before the planned switch to online filing.

- Several commenters addressed § 4104, relating to "defective" registrations. This entire section has been revised to clarify the standards, which were confusingly drafted. The section should now reflect and clarify what has been the practice of RAD to allow minor technical corrections to be fixed without serious consequence to a housing provider, but imposing serious sanctions (*i.e.*, invalidating the registration) if the housing provider refuses to fix the errors.

- Several comments addressed § 4106.8, which provides a "cooling-off" period when a tenant receives late notice that their rental unit is exempt from rent stabilization. One commenter suggested that the Commission does not have statutory authority to impose this rule. The Commission disagrees. It is well-established that failure to give notice of a claimed exemption invalidates the exemption, *see Levy v. D.C. Rental Hous. Comm'n*, 126 A.3d 684 (D.C. 2015), and that consequence should logically apply to a failure under either §§ 205(d) or 222(b)(1)(E) of the Act (D.C. Official Code §§ 42-3502.05(d) or 42-3502.22(b)(1)(E)). No case law clarifies whether or at what point a housing provider may again take a rent increase, and the Commission believes invalidating an otherwise-valid exemption forever based on a failure of notice would be unreasonable. The proposed cooling-off period therefore establishes a reasonable end to the consequence of an exemption being invalidated while protecting tenants who had reason to believe their rental units were covered by rent stabilization.

  On the other hand, two comments suggested the 30-day period proposed by the Commission should be extended to one (1) year. The Commission originally proposed 30 days because that is the normal notice period for a rent increase in covered rental units. The Commission disagrees that a 12-month period is appropriate, as this will likely only have significant effects for tenants who were on month-to-month leases, rather than (typically) 12-month, fixed-duration leases for fixed rents. The Commission recognizes, however, that 30-day notice of rent increases applies in the situation where a tenant can reasonably predict the amount of upcoming rent increase because it is set by law. It may be difficult if not impossible for a tenant to quickly make an informed decision to leave a newly-exempt unit when a rent increase has

already been noticed. Because, under § 533 of the Act (D.C. Official Code § 42-3505.53), a tenant can be required to give no more than 30 days' notice of intent to vacate a rental unit, the Commission believes it is reasonable to add these periods together and allow a tenant 60 days after being notified of an exemption before any rent increase may take effect.

The Commission also follows this reasoning with regard to § 4101.8, which provides an identical cooling-off period for an essentially similar failures to provide notice of an exemption.

- One set of comments suggested that the Commission specify additional consequences for failing to make the required disclosures under § 4111, beyond the cooling-off period described above. The Commission disagrees with the suggestion to impose tolling on the statute of limitations for any prior, undisclosed rent increases. Equitable tolling of the statute of limitations may be appropriate in some cases where fraudulent concealment can be shown, but that determination should be made on a case-by-case basis (which, to date, no case under the Act has done). *See East v. Graphic Arts Indus. Joint Pension Trust*, 718 A.2d 153 (D.C. 1998) (discussing generally applicability of tolling rules for statutes of limitations in District of Columbia). The Commission also disagrees that these rules should provide that a lease is voidable due to a failure to provide the required notice. Voiding a lease entirely, if that is the appropriate remedy, should be a matter for the D.C. Superior Court to determine.

Chapter 42 (Rent Stabilization Program)

General issues of "rent" terminology

- Nearly all commenters expressed concerns with the First Proposed Rulemaking's definitions of "rent," "rent charged," "rent surcharge," and "rent adjustment" in § 3899 or with the usage of those terms throughout Chapter 42 and suggested there may be unintended consequences to some changes that were meant as clarifications. Accordingly, the revised rules simply copy the statutory definitions of "rent," "rent charged," and "rent surcharge." "Rent adjustment," which is not defined in the statute, is revised from the First Proposed Rulemaking to mean the act by a housing provider of increasing or decreasing rent, rather than the legal basis for that adjustment under the Rent Stabilization Program.

- The substantive rules governing rent adjustments are further revised to clarify that the Rent Stabilization Program primarily regulates "rent" increases. *See Fineman v. Smith Prop. Holdings Van Ness LP*, RH-TP-16-30,842 (RHC Jan. 18, 2018) at 30-31. The substantially similar term "rent charged" will be used for reporting requirements, *see* D.C. Official Code § 42-3502.22a ("Forms to include definition of the term rent charged"), to identify the basis of calculating allowable rent adjustments, *see, e.g.,* D.C. Official Code § 42-3502.08(h), to distinguish between the lawful rent exclusive of any rent surcharges and the total rent for a rental unit, *see* D.C. Official Code § 42-3501.03(29C), or in some cases to distinguish between the maximum rent that a housing provider can lawfully demand or receive and any amount that a housing

provider may have actually and unlawfully demanded or received, *see* D.C. Official Code § 42-3509.01(a). In several cases, such as newly-established rental units and vacant rental units, the Rent Stabilization Program requires a housing provider to determine the legal amount of rent that they may demand or receive for a rental unit, potentially before any tenant agrees to pay that amount. In those situations, the revised rules refer to the "maximum, lawful rent" for a rental unit; the housing provider violates the Rent Stabilization Program if the next tenant's actual rent exceeds the lawfully calculated maximum. In fact, basing new calculations of lawful rents on prior "actual" rents would be problematic if the prior rent was an unlawful amount. The housing provider is not allowed, however, to preserve any difference as a *de facto* "rent ceiling."

- On the matter of rent decreases, the Commission did not receive significant, non-technical comments on its proposed rule, at § 4204.11, clarifying that a housing provider must file a Certificate of Notice of Adjustment in Rent Charged with RAD when decreasing the rent for a rental unit. Because the Commission received several comments generally addressing the controversial practice of "rent concessions," and because the Commission is aware of major public and legislative interest in the topic, we note only that this proposed rulemaking does not attempt to resolve the question of what may be a "good" concession or to create any bright-line exceptions to the filing of downward rent adjustments.

Timing of rent adjustments

- Several commenters addressed the proposed rule found in § 4200.12, § 4204.9, and elsewhere that a housing provider forfeits the legal basis for a particular rent adjustment if it is not implemented within 12 months of when it is first authorized. Tenant advocates favored the rule as preventing the reestablishment of rent ceilings by other means. Housing provider advocates asserted that the rule lacks any statutory authorization. The Commission is satisfied that the 12-month expiration rule reasonably implements the Act. The plain text of the Act is silent as to whether or not authorization for a rent adjustment must be taken immediately, can be preserved for some amount of time, or can be preserved indefinitely.

  The Commission believes that indefinite preservation of rent adjustments would be an absurd result at odds with the legislative purposes of the Act. Under the rent ceiling system in place before 2006, rent ceiling adjustments were expressly allowed to be indefinitely preserved. *See* D.C. Official Code § 42-3502.08(h)(2) (2001) ("A rent ceiling adjustment, or portion thereof, which remains unimplemented shall not expire and shall not be deeded forfeited or otherwise diminished."). That express preservation of unimplemented adjustments was removed when rent ceilings were abolished by the Rent Control Reform Amendment Act of 2006, effective August 5, 2006 (D.C. Law 16-145; 53 DCR 4889) ("Rent Control Reform Act"). Therefore, the Act itself is silent as to whether or for how long authorization for rent adjustments may be preserved.

  From the Commission's review of the legislative history of the Rent Control Reform Act, it appears that one perceived problem with the rent ceiling system was the indefinite preservation of rent adjustments, which resulted in tenants facing seemingly-

arbitrary rent increases that had little or no connection to their current circumstances. *See* Council of the District of Columbia, Committee on Consumer & Regulatory Affairs, Addendum to the Committee Report, Bill 16-109 "Rent Control Reform Amendment Act of 2006" (2006) ("2006 Committee Report") at 18 ("the large majority of tenants under the rent stabilization program face a situation where rent increases are uncertain and worrisome," even without regard to the magnitude of available preserved rent adjustments) & 26 (describing situation of instability faced by tenants resulting from preserved rent adjustments). The Council further emphasized that rent adjustments should be based on the "current" rent charged. *See, e.g., id*. at 2-3. The Commission views preservation as inconsistent with that principle; for example, a housing provider could preserve a CPI-W adjustment in one year that might, in a later year, exceed the amount of the current CPI-W. Housing providers should, accordingly, implement rent adjustments as soon as reasonably possible after they become authorized.

Moreover, a forfeiture rule is a reasonable effectuation of a regulatory scheme meant to slow the growth of rents while preserving reasonable returns to owners. If a housing provider preserves a petition-based rent adjustment rather than implementing it soon after it is authorized, it raises significant public policy questions as to why the rent adjustment was necessary when the housing provider applied for it. The proposed 12-month time limit specifically aligns with the 12-month restriction on rent increases: *i.e.*, once authorized, a rent adjustment will not expire before the minimum, next-available time for a housing provider to lawfully implement the adjustment.

- Two commenters noted that several practical difficulties may occur from the 12-month expiration rule, particularly where construction or other work is not complete before an associated rent increase is approved. Indeed, this could result in conflicts with other rules designed to assure tenants receive the benefit of any renovation or increased services or facilities before being required to pay increased rent. *See, e.g.,* § 4211.12. This would also potentially conflict with the statutory provision that an authorized rent increase does not supersede a lease term of a fixed rent for a fixed duration. D.C. Official Code §42-3502.08(e). Accordingly, the revised rules, at § 4204.9, contain clarifications as to when a rent adjustment is "first authorized."

- One commenter noted that the requirement in § 4204.10 that notice of rent adjustments be filed with RAD 30 days before the adjustment takes effect did not make sense and conflicts with § 205(g)(1)(A) of the Act (D.C. Official Code §42-3502.05(g)(1)(A)), requiring notice to be filed 30 days after the adjustment. The revised rules correct this error.

- Two commenters suggested that vacancy adjustments should be treated as "effective" when the next tenant first pays the new rent, consistent with other rent adjustments. The Commission believes vacancy adjustments should be treated differently from other adjustments because they necessarily deal with the maximum, legal rent that may be charged in the future. Therefore, the housing provider essentially must "prefect" the adjustment based on and close to the date of the vacancy, which is certain, as opposed to the date a new tenant first pays rent, which may be much later. This requirement

helps assure that clear records are kept and that calculations are done based on the rent charged at the time the vacancy occurs, not including any petition-based rent increases that may become authorized during an extended vacancy. However, in § 4214.10(b), the Commission recognizes that the "effective date" for statute of limitations purposes, as opposed to filing purposes, should be the date on which the rent is charged to a tenant.

CPI-W adjustments

- One set of comments suggested that the Commission "restore" the rule that an adjustment of general applicability be implemented within 30 days after being first eligible, currently found in § 4204.10. The Commission disagrees, because the current rule applied only to taking and perfecting rent *ceiling* adjustments. Although in practice this often meant that the annual inflation-based adjustment was taken in May of each year and also implemented at the same time, nothing in the Act requires the rent increase to occur on that schedule, except that it will often in practice be one year since the prior rent increase, as required by §§ 206(b) 208(g) of the Act (D.C. Official Code § 42-3502.05(b) & 42-3502.08(g)). Rather, under the proposed rules, a housing provider may implement an adjustment of general applicability at any time, provided a year has passed since any other rent increase, in the amount allowed by the then-effective percentage published by the Commission for the May-to-May cycle. As with other rent adjustments, authorization for each year's adjustment of general applicability will expire after 12 months, *i.e.*, when the next year's adjustment rate becomes effective.

- One commenter suggested that the rules should include the formula used by the Commission to determine the CPI-W each year. As the data sources and format published by the Bureau of Labor Statistics ("BLS") have changed several times, this is better explained through public guidance on current practices, which the Commission intends to post on its website. For reference, the Commission presently relies on Series Report CWURS35ASA0, available through the "Data Tools" section of bls.gov.

- One commenter suggested that the "retroactive" provisions for elderly tenants and tenants with a disability in § 4206.8 were unsupported by the Act. This comment is partially correct but misreads the proposed rule. Section 224(e) of the Act (D.C. Official Code §42-3502.24(e)) specifically provides that a tenant's rent shall be reduced to the level that would have been allowed by an immediately-prior CPI-W adjustment. This "rent rollback" is a form of prospective relief only; a "rent refund" for back-rent is not authorized. *See* § 3899.2.

Vacancy adjustments

- One set of comments suggested that the Commission restore the definition in current § 4207.4 of "substantially identical rental unit," which continues to be relevant to, among other things, notice of past rent adjustments. Further, the standard found in § 209(a) of the Act (D.C. Official Code § 42-3502.09(a)) for determining lawful rents on termination of certain exemptions continues to use the "substantially identical," 30%

adjustment formula that was used for vacancy adjustments prior to 2018. Because this term appears several times throughout the proposed rules, the definition currently found in the rules has been added to the definitions section of the revised rules.

- The commenters also suggested that, as with § 4111, failure to make the disclosures required by § 4207.7 should toll the statute of limitations. For the same reasons cited above, the Commission does not agree that tolling should be added by rule, even if it may be appropriate as a case-by-case determination of equitability, remedy for fraudulent concealment, or as an application of the discovery rule. Moreover, it is not clear that those doctrines would necessarily apply where the tenant is at least aware of what the rent is when they move in, if not the legal basis for it.

Petitions generally

- The Commission received several comments related to petitions for approval of rent adjustments and the housing code. Tenant advocates supported the clarification of the rule that petitions should not be approved where the housing accommodation is not in substantial compliance with the housing code. On the housing provider side, comments suggested that there is no statutory basis for the rule and that § 208 of the Act (D.C. Official Code § 42-3502.08) only prohibits implementation of a rent increase, not the administrative approval. The District of Columbia Court of Appeal has previously held that the Commission's rules at 14 DCMR § 4216 reasonably implemented the Act by requiring compliance with the housing code before approval of a rent ceiling increase. *Dorchester House Assocs., LP v. D.C. Rental Hous. Comm'n*, 938 A.2d 696 (D.C. 2007). The same reasoning applies, in fact with more force, to the direct administrative approval of rent increases in the absences of rent ceilings.

  The clarifications to the rule, at § 4216.4, provide that tenants may challenge a petition on the grounds that substantial housing code violations existed at the time the petition was filed, but the petition may be approved if the housing provider demonstrates compliance by the time of an evidentiary hearing. Tenant advocates suggested that petitions should be disapproved entirely if the petition was filed while substantial violations existed, without forgiveness if the violations are corrected before approval. The Commission disagrees, because the purpose of the requirement is to assure compliance with the housing code and the correction of violations, not to simply prevent rent increases. The cutoff time is set at the evidentiary hearing because of the practical need for finality in the adjudicative process.

- One set of comments suggested that the Commission clarify that housing provider petitions (and voluntary agreements) may be opposed on the grounds that they are retaliatory, which the current rules expressly provide only in the case of services or facilities petitions, at § 4211.2(c). One commenter asserted that the current and proposed rule with regard to services or facilities petitions is unsupported by the Act. The Commission agrees that filing a petition or voluntary agreement is an action that may "increase rent, decrease services, [or] increase the obligation of a tenant," within the meaning of § 502(a) of the Act (D.C. Official Code § 42-3505.02(a)), and therefore may be prohibited as a retaliatory action. *Cf. Twyman v. Johnson*, 655 A.2d 850 (D.C.

1995) (explaining retaliation as a defense, not a separate cause of action). Accordingly, the revised rules governing these rent adjustments now expressly enumerate retaliation as a basis for tenant objections.

- Multiple commenters suggested that the Commission should require additional service of petition and voluntary agreement-related documents. In consultation with RAD, the Commission disagrees. While those filings are, in effect, public documents and advocates may request or be granted access to them, it is not appropriate in general for RAD or OAH to do the work of reaching out to potential legal counsel for tenants, nor is it appropriate to require a housing provider filing a petition to do so either. RAD currently maintains a list of service providers that is publicly available and may be included with any service on parties to a petition, but they (or OAH) should not be responsible for contacting those organizations if the parties themselves have not. The one exception is that the proposed rules require a voluntary agreement, on its filing, be given to the Office of the Tenant Advocate and the Housing Provider Ombudsman. Those filings have implications for tenants' collective exercise of their rights and may involve negotiation of more complicated terms or changes in management or ownership of a housing accommodation, and therefore notice to those particular, governmental offices that a voluntary agreement application has been opened is warranted.

Hardship petitions

- Multiple commenters suggested, directly or indirectly, that the accrual method of accounting, allowed under the current rules, is difficult to apply when evaluating a hardship petition because of the allowances for deductions of unpaid obligations. The Commission agrees. Nothing in the Act requires that a housing provider be able to elect which accounting method it will use to calculate its rate of return. Accordingly, the revised rules eliminate the option to use anything other than the cash method of accounting.

- One set of comments noted that Commission precedent requires the maximum possible rental income for a housing accommodation to include adjustments of general applicability that could have been but were not implemented in the preceding three (3) years as a means of reducing preventable "hardships." *See Estate of Edna Metzerott v. Tenants of 117 35th Street, N.E.*, HP 20,608 (RHC May 14, 1993); *1831 Belmont Road, N.W. v. Tenants of 1831 Belmont Road, N.W.*, HP 20,027 (RHC Feb. 20, 1987). Accordingly, the revised rule at § 4209.13 includes this requirement.

- One commenter suggested that there is no statutory basis for several of the proposed rules related to the maximum possible rental income and other income derived from a housing accommodation, (now) at §§ 4209.13-4209.14. The Commission believes that these rules reasonably implement the Act because the underlying reason for a hardship petition is to assure that rent stabilization is not preventing a reasonable rate of return. It is not a subsidy to guarantee a particular rate of return in the face of market conditions that do not support sufficient revenues. By including all outstanding grounds for rent adjustments and all reasonably determinable other sources of income from the property

in the net operating income, the process will better determine if rent stabilization is in fact causing a hardship.

- Multiple comments addressed the prohibited deductions for operating expenses. The proposed rules directly copy the specific, statutory list of deductions in § 212(b)(1)(A) of the Act (D.C. Official Code § 42-3502.12(b)(1)(A)). The inclusion of "court judgments" in the current rules has no statutory basis, and the proposed rules remove it. The limitation of attorney's fees for violations notices brought by the Department of Consumer and Regulatory Affairs ("DCRA") is specific and narrow. In the revised rules, the Commission has also removed the previously-proposed inclusion of attorney's fees resulting from violations of the Act.

- One set of comments addressed issues that have arisen with accessing financial information supporting hardship petitions, which is often voluminous. The Commission agrees that affected tenants should be assured access to all supporting documents as a due process matter. The revised rules accordingly include, at § 4209.29, a requirement to provide electronic copies to tenants or their representatives.

- One commenter asserted that the proposed rule, (now) at § 4209.31, allowing the Rent Administrator to issue an order delaying the time for a conditional rent surcharge, is improper for several reasons. The Commission believes that this rule is a reasonable procedural rule to prevent a housing provider from benefiting from a delay they have caused. The Commission agrees that the reference to tenant notice should be removed because that is the responsibility of the Rent Administrator under the proposed rules. Because the process is on a 90-day clock, the Rent Administrator should be able to quickly act to stop the clock if any documentation supporting the claimed negative income is missing.

- Multiple commenters addressed the rules related to provisional orders. The Commission recognizes that, in practice, the time limits set by § 212(c)(3) of the Act (D.C. Official Code § 42-3502.12(c)(3)) are unlikely to be met for an evidentiary hearing to be held no more than 80 days after the petition has been filed. To the extent a hearing might be held, the Commission believes that the only good cause for extending the conditional rent surcharge at this point would be unreasonable delay by the housing provider. The statute specifically authorizes the conditional adjustment based on the time elapsed since the filling of the petition. Any substantive objection to the petition would be the proper subject of a provisional or final order.

Capital improvement petitions

- One set of comments suggested that the 15/20% rent increase limits could be circumvented by "stacking" multiple increases; the Commission is not clear on what situation the comment is describing, because "stacking" of multiple rent increases is generally prohibited by the Rent Stabilization Program. The Commission would welcome further comment to clarify the perceived problem and whether a regulatory solution can be found.

- One commenter addressed the rule at § 4210.6 regarding the interaction of § 501(f) of the Act (D.C. Official Code § 42-3505.01(f)) and capital improvement work that may temporarily displace tenants. The commenter suggested the provision be removed because typically tenants and housing providers are able to work out arrangements for temporary moves without resorting to the Act's eviction provisions. The Commission recognizes that those provisions may not be necessary, and indeed it is preferable for tenants to move by mutual agreement. However, as a backstop, tenant's rights in these circumstances, which include relocation expenses, are provided by § 501(f). Accordingly, the revised rules provide that a capital improvement petition will not be invalidated if the tenant has expressly waived the rights provided by the Act in reaching the kind of agreement described by the commenter.

- One set of comments suggested, for capital improvement and substantial rehabilitation petitions, that Commission precedent requires that the interest on a loan be commercially reasonable. The case that the commenters appear to refer to is in fact a pair of hardship petitions, *Tenants of 1255 New Hampshire Ave., N.W. v. Hamilton House, LP*, HPs 20,388 & 20,497 (RHC May 24, 1996). Nonetheless, the principle addressed by the commenters is correct, and the revised rules in §§ 4209.19, 4210.11, 4210.12(a), 4212.8, and 4212.9 require that costs and interest rates be commercially reasonable, as defined in § 3899.2.

- Multiple commenters addressed the disparity between the default interest rates applied for capital improvement petitions and substantial rehabilitation petitions. This distinction and the particular basis points used have not changed since the rules were originally promulgated in 1986, and while it may be appropriate to revise them, the Commission does not have and has not yet been presented with specific data and analysis of what rate for either or both is appropriate. While these rates are unchanged in the revised rules, the Commission welcomes future comment on this subject.

- Two commenters suggested that the proposed rule now at § 4210.26, regarding failure of the Rent Administrator to act within 60 days, is unsupported by the Act. These comments misconstrue § 210(e)(2) of the Act (D.C. Official Code § 42-3502.10(e)(2)) by conflating the physical alterations or other work that constitute the capital improvement with the rent adjustment sought by a capital improvement petition. *See Lenkin Co. Mgmt. v. D.C. Rental Hous. Comm'n*, 642 A.2d 1282 (D.C. 1994).

- Two commenters suggested that a certificate of continuation should be disapproved if the housing provider did not recover all costs within the original, approved duration because the surcharge was "selectively implemented." While the Commission recognizes that there may be invidious bases on which a surcharge could be selectively implemented, it is not apparent that *any* partial implementation or waiver as to some tenants should necessarily be prohibited. Moreover, the proposed rules at §§ 4210.29(c) and 4210.32 place the burden on the housing provider to demonstrate good cause for the failure to recover all costs within the original, approved duration. Accordingly, a rule on "selective implementation" does not appear necessary.

Services or facilities petitions

- Several comments addressed the proposed inclusion of "mandatory fees" in the definition of "rent," suggesting that it would potentially lead to confusion about legal rents and amounts due to avoid eviction. The Commission agrees and has created a new provision related to mandatory fees in § 4211.2.

- One set of comments suggested that the rules should be revised to address future costs of utility services, if those are eliminated, and to allow tenants with leases providing for utilities to opt-out of the elimination for the duration of their tenancy. While the Commission recognizes that the services or facilities petition process is an imperfect vehicle for determining future costs, particularly where energy costs tend to spike and collapse over time, finality of approval is necessary for the administration of the Rent Stabilization Program. That is, a best estimate of future costs must be made, the rent reduced, and the service eliminated from the registered, related services. If particular tenants have a contract claim based on their leases, that is outside the scope of a services or facilities petition.

- Multiple commenters addressed the proposal to treat any new or increased services or facilities as "related" after three (3) years even if the housing provider does not file a petition for a rent increase based on the change. One commenter suggested it is not supported by the statute, and that a housing provider is only obligated to provide those services or facilities that are on the registration for the housing accommodation. The Commission disagrees, because § 211 of the Act (D.C. Official Code § 42-3502.11) is broadly written and does not speak only to services or facilities that are registered as related. By analogy to the 3-year statute of limitations for tenants to challenge a reduction in services, the Commission believes that a housing provider should not be able to disclaim after three (3) years that a service was in fact provided as part of the rent that tenants have been paying. Tenants would reasonably expect from such a course of conduct that the service is a part of the overall bargain.

  Another set of comments suggested that the 3-year window should be reduced to one (1) year, because new tenants may assume that they chose to live in a building where the service or facility is included. While there may be some reliance interest in such a case, three (3) years is a more appropriate period because it is analogous to the statute of limitations, in that the state of affairs has been acceded to by the party it is enforced against, *i.e.*, the housing provider.

- Multiple commenters addressed the rule now at § 4211.8 regarding the standards for determining the monthly value of a related service or facility. One commenter suggested that the fair market value of comparable services should be the primary factor, with the costs to tenants or the housing provider as a fallback in the absence of reliable evidence. Another set of comments suggested that the rule should require the use of the higher of the cost to tenants or housing providers, citing different electrical rates charged to different consumers as an example. The Commission does not believe that any one of the three (3) options should necessarily be given primacy over any others. These standards not only govern service or facilities petitions, but tenant

petitions alleging reductions of services. Accordingly, the standard is purposely flexible and may require weighing of competing evidence that may be more or less persuasive in particular circumstances, considering the knowledge and experience of the finder of fact.

Substantial rehabilitation petitions

- Multiple commenters addressed the standards now at § 4212.13 regarding the physical condition of a housing accommodation in relation to the interest of the tenants. The Commission agrees that testimony of tenants or other witnesses should be admissible, albeit some questions may be structural or engineering issues that require specialized knowledge. One set of comments suggested that the interest of the tenants should be determined in consideration of whether current disrepair could have been prevented. The Commission disagrees on this point. The interest of the tenants should be determined by looking forward to whether proposed repairs can improve living conditions. While the Commission acknowledges that housing providers, in principle, should not benefit from long-term neglect, the greater purpose of a substantial rehabilitation petition is to fix major disrepair. Prior neglect may nonetheless be subject to remedies for reductions in services. *See SCF Mgmt. v. Tenants of 2724 11th Street, N.W.*, RH-TP-15-30,690 (RHC Feb. 18, 2020) at 38.

- Multiple commenters suggested that the amount of a rent surcharge should be calculated in ways that break out certain costs. One set of comments proposed to exclude costs of repairing substantial housing code violations. Another commenter suggested using the useful life of an improvement as the denominator for calculating the monthly rate. The Commission disagrees with both of these proposals for related reasons. The scope of work performed in a substantial rehabilitation will likely be very broad and will include multiple, interrelated problems and fixes that probably cannot be reasonably separated from each other. For example, the useful lives of plumbing systems or electrical systems may not be the same, and walls that contain lead-based paint may need to be removed to access either.

Voluntary agreements

- The Commission received extensive public comments on § 4213. In addition, on further consultation with RAD, the rules requiring substantive review and a provisional order cannot adequately be performed in the given time, would strain the available resources to RAD, and are unnecessary in light of the *de novo* fact finding and review by OAH after a hearing. The revised rules accordingly remove that process, and contested voluntary agreements will be automatically transferred to OAH for a hearing, consistent with the rules for housing provider petitions.

- Virtually all commenters addressed the reasonableness test proposed in (now) §§ 4213.21-23. One comment asserted that the Commission lacks statutory authority to impose such a test and that doing so would undercut the legislative process, where voluntary agreements have been the subject of years of debate. The Commission disagrees. Section § 215 of the Act (D.C. Official Code § 42-3502.15) is mostly silent

on what conditions should result in approval or disapproval of a voluntary agreement, with only one specific rule for automatic approval in subsection (c)). A rule of reason is appropriate in light of the statutory purposes and is not, contrary to the comment, arbitrary. Reasonableness review by the administrative agencies advances the purposes of the Act to protect tenants from rising rents burdens and to assure housing providers are adequately compensated. Reasonableness may include some, but not necessarily all, factors listed in § 4213.22. A low rate of return, for example, may be one basis to show that a large rent increase isn't unreasonable, or a high rate of return might weigh against rent increases where there aren't any changes to services. This factor may also be irrelevant to a particular agreement. In sum, is a balancing test of the kind that courts and administrative tribunals are perfectly capable of applying. The Commission is aware of the ongoing legislative process, in which numerous concerns have been raised on both sides, and views its rulemaking authority as one way to address some concerns, which were also raised by commenters on this rulemaking, until such time as the legislature revises the statute.

- Several commenters addressed the factors that should be considered in making a reasonableness determination. One commenter suggested a bright-line rule that agreements raising rents only on future tenants should be considered reasonable, while several others suggested the opposite. The Commission believes that this should be determined based on the totality of the circumstances, including other identified, relevant factors. One of the reasonableness factors proposed, and clarified in the revised rules, is the justification for any disparities in treatment between classes of tenants or rental units, and "future vs. current" can be considered under that rubric. We also note that the general 12-month expiration rule for approved rent adjustments may bear upon whether a particular agreement could actually be carried out, at least for occupied units. Any buyouts of current tenants must also be disclosed and considered in balancing the relevant reasonableness factors.

  One commenter suggested that deference to the plain language of a voluntary agreement should be considered the best evidence of reasonableness. Such a rule would amount to a presumption that a voluntary agreement must be approved, contrary to the ordinary requirement, in D.C. Official Code § 2-509(b), that the proponent of an order, in this case, whichever party initiated the voluntary agreement approval application, bears the burden of proof.

  Two sets of comments addressed the relationship between a voluntary agreement and housing provider petitions. Essentially, the commenters suggested that the references to capital improvements, changes in related services or facilities, and rate of return should be applied to set hard caps on the rent increases allowable under a voluntary agreement. The Commission disagrees, because, although those standards strictly apply to their respective petitions, the voluntary agreements provision of the Act creates a more flexible avenue for making changes in a housing accommodation that are not necessarily covered by the other rent adjustment. Although the Commission acknowledges the potential for abuse of this flexibility, the process overall should be able to accomplish by agreement reasonable goals that cannot be reached through the force of a petition.

One set of comments suggested that the rule against unjustified disparities should expressly include different rents for non-signatory tenants. While the Commission agrees that different treatment of non-signatories purely because they decline to sign would likely weigh heavily against finding a voluntary agreement to be reasonable (and would arguably be retaliatory), a bright-line rule may not be appropriate because there could be an otherwise-reasonable agreement that a small group of tenants do not benefit from, and all of whom naturally would not sign. Although that may be a narrow subset of voluntary agreements that advocates have seen, the Commission does not want to entirely foreclose the possibility without case-by-case evaluation.

From several of the comments the Commission has also revised and expanded the list of factors. Relatedly, the Commission has removed the requirement that an initiating party file data about comparable area rents at the outset in any application. That information has been moved to the reasonableness determination and may be considered when relevant to a particular agreement. One set of comments suggested that "market rents" should be a bright-line cap for any rent increases under a voluntary agreement. The Commission again disagrees with applying a bright-line rule to this analysis. However, the revised rule now also includes the considerations proposed for the "interest of the tenants" element of substantial rehabilitation petitions as to whether tenants will become rent-burdened or what the impact of any construction and relocation might be.

Finally, several commenters addressed the use of voluntary agreements in connection with deals arising under the Tenant Opportunity to Purchase Act of 1980 (D.C. Law 3-86; D.C. Official Code §§ 42-3404.01 *et seq.*) ("TOPA"). The Commission believes that, if a particular voluntary agreement includes terms related to TOPA or a TOPA deal is implicated or affected by the agreement, that fact should be a consideration in evaluating the reasonableness of the agreement and all relevant terms should be submitted for review.

- One commenter suggested that the definition of coercion, as a basis for rejecting a voluntary agreement application, should be expanded to include "economic coercion" and the "influence of monetary payments." Although there may be some cases where financial considerations are so significant as to be coercive within the ordinary meaning, the Commission does not agree that any monetary payments should be deemed inherently coercive. The commenter provided legal briefs on the subject as reference, which analogized cases brought under the National Labor Relations Act. Those cases held that monetary payments or threats to withhold payments cannot be used in elections to *form a collective bargaining unit*. The Commission expresses no view on whether such actions might relate to this Act's prohibition on interference with forming a tenant organization. *See* D.C. Official Code § 42-3505.06(d). However, the negotiation of the substantive *terms of a collective agreement*, whether between labor and management or between tenants and housing providers, necessarily involves financial give-and-take. Therefore, those terms should be evaluated for reasonableness in totality, rather than outright prohibited.

- Several commenters addressed the issue of how to count tenants for determining whether 70% have signed a voluntary agreement. The plain language of §215(a) of the Act (D.C. Official Code § 42-3502.15(a)) applies to "the tenants of a housing accommodation." The Commission agrees that employees of the housing provider, to the extent they are "residents" but not "tenants" under District of Columbia law. *See Anderson v. William J. Davis, Inc.*, 553 A.2d 648 (D.C. 1989). The Commission also agrees that persons with an ownership interest do not qualify because the Act defines "tenants" as those occupying rental units "owned by another person." D.C. Official Code § 42-3501.03(36). The revised rules apply the test of "direct or indirect ownership interest" that is proposed for the small landlord exemption from rent stabilization. *See* §§ 4107.8-4107.12. To the extent "indirect interest" may include units "owned by another person," it would be unreasonable to allow the probable conflict of interest of a voter on an agreement being so closely associated with an owner. Tenants unaffected by rent increases under § 224(i) of the Act (D.C. Official Code § 42-3502.24(i)) are not inherently conflicted out as other terms of an agreement may still be in or against their interests.

- Several comments included references to the initiation of an application for administrative approval of a voluntary agreement and to the negation and signing of a voluntary agreement that appear to misread the proposed rules, and the Commission seeks to clarify the process. Nothing in the proposed rules prohibits negotiation or preliminary agreement to the terms of a voluntary agreement at any time before the application for approval is filed by the "initiating" party. Indeed, it is plainly advisable that the parties reach as much consensus as possible before initiating administrative proceedings.

  The proposed rules then include a 30-day "negotiation" period after the preliminary, "proposed" voluntary agreement has been filed. This administratively enforced waiting period is meant to assure that prior notice of the terms of a voluntary agreement have been not merely presented but served on all tenants of the housing accommodation, whether or not they were involved in preliminary discussions, and that they have had sufficient time to review the terms and seek conciliation. After this waiting and negotiation period, any changes to the terms of the original filing must be filed and served. The 60-day period for signature collection then seeks to assure that all terms are agreed to only by current tenants who were served with a single, clear set of terms and who had the benefit of the negotiation period.

- Two commenters noted that the current rules, carried over into the proposed rules, at §§ 4213.10-4213.11, relating to "notices and responses" and "counter-proposals" after an approval application has been initiated, are unenforced in current practice, burdensome, and would potentially interfere with free discussion and negotiation of potential terms of a finalized voluntary agreement. The Commission agrees, and those provisions have been removed from the revised rules.

Elderly and disability status

- One set of comments questioned the separate dates for exempting protected tenants from services or facilities petition increases and voluntary agreement increases in § 4215.2. The reason is that the Elderly Tenant and Tenant with a Disability Protection Amendment Act of 2016, effective April 7, 2017 (D.C. Law 21-239; 64 DCR 1588), was in part subject to funding, specifically the provisions adding new § 224(b) of the Act (D.C. Official Code § 42-3502.24(b)), which covers housing provider petitions. The prohibition on charging rent based on a voluntary agreement contained in § 224(i) of the Act (D.C. Official Code § 42-3502.24(i)), was not subject to funding because no tax credit offsets are permitted. Although the petition increase-based tax credits were funded starting in Fiscal Year 2019, any petition approved in the interim would be subject only to prior law, which did not contain the exemption/credit system.

- One set of comments addressed the timeline for housing provider challenges to tenant applications for protected status. The Commission agrees in principle that the 30-day challenge and decision period is very difficult to meet, but is set by statute at § 224(h)(2) of the of the Act (D.C. Official Code § 4203502.24(h)(2)). This section only apparently applies, however, to applications made on a freestanding basis when a tenant falls within a protected category, and not necessarily to the submission of information that a tenant is protected in the course of a contested petition.

Housing code violations

- One set of comments suggested that the list of *per se* substantial housing code violations should include breaches of the implied warranty of habitability by impairing the "use and enjoyment of the premises" and not just violations that present significant health and safety risk. The Commission disagrees, because the definition of "substantial violation" requires that the deficient condition "may endanger or materially impair the health and safety of any tenant." D.C. Official Code § 42-3501.03(35). Although a breach of the warranty of habitability would also, most likely, constitute a reduction in related services or facilities, as do any "substantial violations" of the housing code, "substantial violations" also have the effect of prohibiting rent increases. Reductions in related services, whether or not health and safety related, may necessitate a rent reduction and refund, but are not sufficient to invalidate an otherwise-properly taken rent increase. *Cf. SCF Mgmt.*, RH-TP-15-30,690 at 19-21.

- One set of comments proposed several specific additions to the list of *per se* substantial housing code violations. The Commission agrees as to the inclusion of violations of indoor mold regulations. The Commission also agrees as to adding back the reference in the current rules to curtailment of utility service; however, the Commission notes that the current provision of the housing code, 14 DCMR § 600.3, does not appear in the Property Maintenance Code and is not present in the most recent proposed rulemaking from DCRA to amend the housing code.

Remedies

- One comment suggested that the rules should expressly allow a tenant to file a tenant petition challenging a housing provider's claim of exemption or exclusion. The proposed rule at § 4214.4(a) explains that a tenant may challenge a rent increase based on a failure to meet the registration requirements of the Act (i.e., failure to register or to properly claim an exemption). The Commission does not agree that a freestanding cause of action for improper registration, exemption, or exclusion should be found in the Act. The Act provides a cause of action for rent increases and other specific acts against tenants, and exemption from rent stabilization or exclusion from the Act is a defense to such claims. *See Goodman v. D.C. Rental Hous. Comm'n*, 573 A.2d 1293 (D.C. 1990). Claims of invalid registration or exemption cannot be time-barred under the Act's statute of limitations because they are necessary preconditions to rent increases, not separate causes of action. *See Smith Prop. Holdings Consulate, LLC v. Lutsko*, RH-TP-08-29,149 (RHC Mar. 10, 2015). The Rent Administrator has the power to review registrations and claims of exemption at any time, and tenants who believe a registration is invalid in advance of a rent increase may wish to make a report or request a review, but a tenant petition should only be filed when a particular injury has accrued.

- Multiple commenters addressed the rules at § 4214.10 clarifying the applicability of the statute of limitations, particularly on failures to comply with obligations under an approved petition or voluntary agreement. The Commission has clarified that the time to file a petition begins to run from the earlier date when the cause of action can be said to accrue. The Commission has also clarified that the "reasonably should have been completed" prong is a fallback only to be used if a particular case presents no clear date otherwise and a tribunal is required to make a judgment call. The Commission welcomes any further discussion to clarify the applicability of these rules.

- Two sets of comments addressed the standards for a finding of "bad faith." One comment suggested that the definition of bad faith proposed at § 4217.7 is vague and open to too much interpretation. The Commission recognizes that the language is quite broad, but the terminology used matches decades of case law under the Act. Suggestions for greater clarity are welcome, but the Commission is not inclined to overturn a very long line of cases. *See, e.g., Pearson v. Brown*, RH-TP-14-30,482 & RH-TP-14-30,555 (RHC May 4, 2020) at 26-30.

  Another set of comments suggested that a housing provider should be automatically found to have acted in bad faith if they attempt to collect a rent increase before a required petition is approved. While the Commission thinks that such circumstances may likely indicate bad faith, the Commission is also aware that the rules around finality, stays, appeals, and judicial review can be difficult to understand. See discussion above on § 3804. Accordingly, circumstances may arise where a housing provider erroneously believed a petition-based rent increase could be implemented but did not act with malice.

Chapter 43 (Eviction, Retaliation, & Tenant Rights)

- One set of comments suggested that the rules for notices to correct or vacate or notices to vacate, at §§ 4301.4(a) and 4302.1(a), should require housing providers to include greater factual detail about the alleged violations. The Commission agrees that the cited examples of "loud and boisterous activity" or "excessive traffic," standing alone, should not be sufficient. However, the level of specificity needed in a notice will be very facts-and-circumstances dependent, and a notice to vacate is less formal than a civil complaint. The revised rules include some additional language to clarify the due process principle that the person receiving the notice must be reasonably informed of the claim against them.

- One comment suggested that the rights provided under § 501(f) of the Act (D.C. Official Code § 42-3505.01(f)) should be expressly applied to tenants displaced in emergency circumstances. While that position may have merit (although its interaction with § 501(n) is unclear), the rules in §§ 4300-4302 deal only with the requirement to serve notices to vacate or to obtain approval for them and the contents thereof.

- Multiple comments addressed the phrasing of the rule at § 4303.1 regarding retaliatory intent, suggesting that "the intent to injure" may create an element not required by the statute and questioning the removal of the phrase "get back at" that exists the current rules. To avoid confusion or to inadvertently change to the standard currently in place, the revised rules restore the "injure or get back at" language. The Commission does not believe this creates any intent requirement that is not implicit in the Act. A substantial body of case law explains that retaliation claims require two elements: an action of the type that may be considered retaliatory within the Act, and a retaliatory motive (which may be presumed in certain circumstances). Most dictionary definitions of "retaliation" include some variation of "injury" or "harm" in return for a perceived injury, insult, harm, etc. from another person, although the injury need not be physical. A benign motive, on the other hand, would clearly not be retaliatory.

- One set of comments addressed the organization and contents of § 4303.2, enumerating the types of action that may be considered retaliatory under § 502(a) of the Act (D.C. Official Code § 42-3505.02(a)). The statutory list of actions is not a model of clarity, and the organization of this rule attempts to, in effect, diagram the long sentence. The comments suggested that the Commission remove the reference to actions that are "unlawful" or "not otherwise permitted by law," as DCCA case law has significantly narrowed this requirement if not read it entirely out of the statute. *See* Gomez v. Independence Mgmt. of Delaware. Inc., 967 A.2d 1276 (D.C. 2009). Nonetheless, the language remains in the statute and future interpretations may give it some force. To the extent it does not have independent force in the Act, it will not in the rules either.

  The comments also suggested that the proposed clarification of the statutory language in subsection (b)(3) is erroneous. The Commission believes that the phrase "constitute undue or unavoidable inconvenience" should be read in the context of the prior phrase "increase the obligation of a tenant," because otherwise any generalized assertion of inconvenience not tied to the landlord-tenant relationship may be raised.

- One set of comments addressed the enumerated list of prohibited actions with respect to late fees in § 4306.5. This list, as revised, is taken directly from § 530(c) of the Act (D.C. Official Code § 42-3503.31(c)). The comment suggested adding a prohibition on charging late fees by applying a current month's rent payment to an outstanding rent balance. The Commission agrees in principle that this practice appears to violate the spirit of the Act, but the precise language of the statute, which prohibits several related practices (such as applying new rent to outstanding *late fees*), does not prohibit the one described. Accordingly, this suggestion should be directed to the Council.

Chapter 44 (Demolition, Conversion, & Relocation Assistance)

- One comment suggested that the Commission should update the dollar amounts of relocation assistance provided in § 703 of the Act (D.C. Official Code § 42-3507.03). Although the baseline amounts set forth in subsection (a) are subject to change by rulemaking, subsection (b) specifically delegates that authority to the Mayor, as opposed to the general delegation of authority under the Act to the Commission. The Commission is not aware of any Mayor's Order sub-delegating that authority to any agency.

IV. Public Comment & Further Review

The Commission invites public comment on any aspect of the proposed rules in this notice. The Commission particularly seeks comment on those aspects that have been revised since the First Proposed Rulemaking. The Commission also particularly invites reply comments to matters raised in the first round of public comments. Because many of the proposed changes are long-overdue updates based on legislative changes, the Commission hopes to move forward expeditiously to a final rulemaking, and comments focused on only the revisions are helpful in that regard. However, it is probable that some other technical mistakes and substantive issues will be identified on further public review, and therefore all comments are welcome.

To expedite public review, the Commission will provide a "redline" copy of this rulemaking, showing tracked changes from the First Proposed Rulemaking. This will be available on https://rhc.dc.gov and copies will be circulated to persons and organizations that submitted comments on the First Proposed Rulemaking. Copies of the comments received by the Commission on the First Proposed Rulemaking are also available on the Commission's website. Interested persons may also contact rhc.clerk@dc.gov or call (202) 442-8949 for copies of these materials.

The Commission intends to hold open, recorded public meetings to take comments and engage in discussion with advocates and interested parties. The Commission expects to hold two (2) meetings, with at least one (1) focused entirely on Chapter 42. Meeting dates and format will be announced as soon as possible, and the meetings will be conducted virtually due to the ongoing COVID-19 state of emergency. The Commission expects to hold these meetings before the close of the written public comment period in order to help focus the remaining issues and to allow prospective commenters to respond to issues raised by others and questions asked by the Commission.

All persons desiring to comment on these proposed regulations should submit comments in writing to:

Daniel Mayer, General Counsel
Rental Housing Commission
441 Fourth Street, N.W., Suite 1140-B North
Washington, D.C. 20001

Or, via email to: daniel.mayer@dc.gov

Due to the ongoing COVID-19 state of emergency, prospective commenters are strongly encouraged to submit comments via email. Persons with questions concerning this Notice of Proposed Rulemaking should call (202) 442-8949. To be considered, all comments must be received or postmarked no later than January 15, 2021.

Strike Chapters 38-44 of Title 14 DCMR, HOUSING, in their entirety, and insert the following in their place:

CHAPTER 38: RENTAL HOUSING COMMISSION OPERATIONS AND PROCEDURES

SECTION

3800 GENERAL OPERATING PROVISIONS

3800.1 The Rental Housing Commission ("Commission") shall establish, with the approval of a majority of its membership, internal operating procedures for the handling of the Commission's business and the fair distribution of work among its members.

3800.2 The Commission shall be open for public business daily from 8:30 a.m. to 4:30 p.m., except Saturdays, Sundays, legal holidays, furlough days, and other closed days, or days of delayed opening, as designated by the District of Columbia Government.

3800.3 For the purpose of Chapters 38 through 44 of this title, all references to "the Act" shall mean the Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code §§ 42-3501.01 *et seq.*), and its amendments.

3800.4 A quorum of two (2) or more Commissioners shall be required for the Commission to take official action in the exercise or carrying out of its powers and duties under the Act, and official action shall be taken only by a vote of the majority of Commissioners present at a meeting on the record.

3800.5 For the purposes of § 3800.4, official action of the Commission shall not include the exercise or carrying out of the powers and duties delegated to the Chairperson of the Commission by § 201a of the Act (D.C. Official Code § 42-3502.02a).

3800.6 Notwithstanding § 3800.4, an order issued in the course of an appeal may be issued in writing by a single Commissioner without a meeting on the record if:

(a) The order dismisses an appeal or an issue on appeal for procedural reasons, including a failure to comply with the filing requirements for a notice of appeal, as provided in § 3802.12, for failure to appear at a hearing, as provided in § 3819.5, pursuant to a motion to withdraw an appeal under § 3824, including for approval of a settlement under § 3829, or for lack of jurisdiction;

(b) Any other section of this chapter specifically provides that an order may be issued by a single Commissioner; or

(c) The order otherwise relates to the process and management of the litigation of an appeal.

3800.7 A meeting on the record shall be open to the public, except as permitted by law to be conducted in closed session, and shall be held at least two (2) business days after notice of the meeting is posted at the Commission's office at One Judiciary Square, 441 4th Street, N.W., Suite 1140BN, Washington, D.C. 20001, and on the Commission's website or the website of the Office of Open Government.

3800.8 A meeting on the record shall be recorded electronically in accordance with § 3820, and the recording of a hearing shall be part of the record of the case being heard. Copies of recordings, accompanied by any written materials upon which the Commission votes to take official action, shall be available on the Commission's website or the website of the Office of Open Government and for public inspection at the Commission's office. Copies of any written materials upon which the

Commission will vote to take official action at a meeting shall be made available to the public within three (3) business days following the meeting. Recordings or written materials made or discussed in a closed meeting or closed portion of a meeting may be withheld from public availability in accordance with D.C. Official Code § 2-575(b).

3800.9 All orders of the Commission, including final decisions and orders, shall be issued in writing and made publicly available at the Commission's office, and may additionally be made available on the Commission's website or the website of the Office of Open Government or by electronic database through other service as the Commission may deem suitable.

3800.10 Amendments to the rules contained in Chapters 38 through 44 of this title shall be effective as follows:

(a) The final rulemaking promulgated on [date] to amend Chapters 38 through 44 of this title shall be effective on May 1, 2021 ("Effective Date");

(b) An appeal filed with the Commission prior to the Effective Date shall remain subject to the rules in effect under Chapter 38 on the date the appeal was filed;

(c) A petition or other proceeding before the Rental Accommodations Division that was filed or initiated prior to the Effective Date shall remain subject to the rules in effect under Chapter 39 or 40 on the date the proceeding was filed or initiated;

(d) An appeal to the Commission from a proceeding before the Rental Accommodations Division or Office of Administrative Hearings shall be subject to the rules in effect under Chapter 38 on the date the final order becomes appealable. If the Commission remands a proceeding, further proceedings before the Rental Accommodations Division shall be subject to the rules in effect on the date the proceeding was filed or initiated; and

(e) All conduct regulated or acts required by Chapters 41 through 44 of this title shall be subject to the rules in effect under those chapters on the date the conduct occurred or act was required, without regard to the date on which a petition or other proceeding is filed or initiated or a decision or order is issued. No claim of, cause of action against, or liability for, a violation of the rules prior to the Effective Date shall be extinguished by the amendment of these rules. Failure to comply with those chapters after the Effective Date shall not be excused by reason that a course of conduct began or a condition existed prior to the Effective Date.

3801 FILING OF PLEADINGS, MOTIONS, AND OTHER DOCUMENTS

3801.1 All pleadings, motions, and other documents that a person wishes to submit to the Commission shall be filed by delivering them in person or by U.S. mail to the Commission's staff at One Judiciary Square, 441 4th Street, N.W., Suite 1140B North, Washington, D.C. 20001, by electronic mail ("e-mail") attachment if authorized by the Clerk pursuant to § 3801.11, or as otherwise directed by the Clerk or by order of the Commission.

3801.2 All pleadings, motions, or other documents shall be deemed filed when received by the Commission's staff during the business hours provided in § 3800.2.

3801.3 All pleadings, motions, and other documents filed with the Commission shall be promptly date stamped by the Commission's staff and entered into the Commission's daily log.

3801.4 In addition to the copies required by § 3801.7, all pleadings, motions, and other documents filed by U.S. mail shall be accompanied by a self-addressed postage paid envelope, and one (1) additional copy which shall be date stamped for mailing to the filing party by the Commission's staff.

3801.5 The Commission's daily log shall be available for public inspection.

3801.6 The Clerk may reject a filing that does not comply with this section. The receipt of a pleading, motion, or other document by the Commission's staff that is not timely or which does not comply with the filing requirements of this chapter shall not constitute a waiver of those requirements, and any such pleading or document may be rejected later by the Commission.

3801.7 Unless otherwise required or filed by e-mail attachment, five (5) copies of all pleadings, motions, and other documents shall be filed, to include the original plus four (4) identical copies.

3801.8 All pleadings, motions, and other documents filed by a party shall be served on the opposing party or parties prior to or at the same time as filed with the Commission and shall contain proof of service as required by § 3803.7.

3801.9 No fees shall be charged for the filing of any papers with the Commission.

3801.10 Any forms that are designed to be filed by parties with the Commission and that may be provided at the Commission's offices or on its website are only for illustration purposes of style and basic content; use of a form is not required and does not guarantee that a filing will be found legally sufficient by the Commission.

3801.11 Pleadings, motions, or other documents, except a notice of appeal, may be filed by e-mail attachment as follows:

(a) All e-mail attachments shall be in Portable Document Format (".pdf" file type) or Microsoft Word format (".doc" or ".docx" file types) and, without modification, shall comply with the formatting requirements in § 3801.13 when printed;

(b) A party may file by e-mail attachment only with the prior authorization of the Clerk in the course of a proceeding before the Commission and in accordance with all directions given by the Clerk; provided, that the Clerk may, in his or her discretion, revoke authorization to file by e-mail attachment with three (3) business days' notice to the party;

(c) For the purpose of documenting receipt, the Clerk shall make a copy of the e-mail to which the filing is attached as part of the record of the case for which it is filed, but nothing in the body of the e-mail shall be considered part of the filing;

(d) An e-mail received outside the business hours provided in § 3800.2 shall be deemed filed at the next day and time that the Commission is open for public business;

(e) A party filing by e-mail accepts the risk that an e-mail or attachment may be delayed or disrupted by technical failure or defect and may not be properly filed, but if a failure is caused by the Commission's or District of Columbia Government's e-mail systems the Commission shall excuse an improper filing; and

(f) All filings by e-mail attachment shall be sent to rhc.clerk@dc.gov.

3801.12 No pleadings, motions, or other documents may be filed by fax.

3801.13 All pleadings, motions, and other documents shall be formatted as follows:

(a) Typed or printed in black ink, with a font size of twelve (12) points, with no less than one-inch (1") margins, on eight and one half-inch (8.5") by eleven-inch (11") inch white paper:

(b) No longer than forty (40) pages, excluding relevant supporting exhibits;

(c) Supporting exhibits, if filed, shall be provided in the original format but shall be reproduced on eight and one half-inch (8.5") by eleven-inch (11") inch white paper; and

(d) On request of the filing party or on its own initiative, the Commission may, in its discretion, waive the requirements of this subsection.

3801.14 All pleadings, motions, and other documents shall contain the following:

(a) The name, address, and telephone number of the party filing the pleading, motion, or other document, District of Columbia Bar number, if applicable, and the party's e-mail address if the party has consented to service by e-mail in accordance with § 3803.3(c);

(b) The Rental Accommodations Division, Office of Administrative Hearings, or Commission case numbers;

(c) The signature of the party, the party's attorney, or the other person authorized to represent the party, which may be by conformed signature ("/s/") in an e-mail attachment if the person signing retains a signed copy and makes the signed copy available to the Commission or any other party upon request;

(d) The signatory's address, telephone number, and e-mail address (if the party has consented to e-mail service in accordance with § 3803.3(c)); and

(e) Proof of service as required by § 3803.7.

3801.15 Any changes in the name, address, e-mail address, or telephone number of the parties or their representatives shall be filed with the Commission within ten (10) days of the change. Opposing parties must be served with notice of the change in the manner prescribed in § 3803.7.

3801.16 By signing a pleading, motion, or other document filed with the Commission, a person certifies that, to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(a) The pleading, motion, or other document is not being filed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(b) Any factual assertions therein are true; and

(c) The legal contentions therein are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

3802 FILING AND ARGUING APPEALS

3802.1 Any party aggrieved in whole or in part by a final order of the Rent Administrator or the Office of Administrative Hearings on a matter arising under the Act may obtain review of the order by filing a notice of appeal with the Commission.

3802.2 An aggrieved party shall file a notice of appeal within thirty (30) days of the issuance of a final order; provided, that if the final order has been served on the

party by U.S. mail, an additional five (5) calendar days shall be added to the time to file an appeal. The filing of a notice of appeal by one party shall not extend the time for any other party to file its own notice of appeal (a cross-appeal).

3802.3 The filing of a notice of appeal from a final order removes jurisdiction over the matter from the Rent Administrator or the Office of Administrative Hearings, except as follows:

(a) If a timely motion for reconsideration is also filed:

(1) If the motion for reconsideration of a final order is not granted, the Commission shall not take jurisdiction over the matter, and the time to file a notice of appeal shall not begin to run, until the motion for reconsideration has been denied by order of the Rent Administrator or the Office of Administrative Hearings, or by the expiration of time pursuant to § 3924.2 or 1 DCMR § 2938.1, respectively; provided, that a timely notice of appeal that was filed prior to the denial of the motion for reconsideration need not be refiled; or

(2) If the motion for reconsideration of a final order is granted in whole or in part, only the order granting reconsideration shall be final and appealable, and the time to file a notice of appeal shall begin to run from the date reconsideration is granted, regardless of whether a party has filed a notice of appeal prior to reconsideration;

(b) The Office of Administrative Hearings shall retain jurisdiction to accept a timely motion for attorney fees, but shall not decide the motion until all appeals of the final order are exhausted and the prevailing party determined; and

(c) The Rent Administrator or Office of Administrative Hearings shall retain jurisdiction to accept a motion for relief from judgment or for a new hearing and shall certify the consideration or disposition of a motion to the Commission so that the Commission may proceed with, stay, remand, or dismiss the appeal without prejudice, as appropriate.

3802.4 A notice of appeal shall be served on opposing parties prior to or at the same time that it is filed with the Commission and shall contain proof of service as required by § 3803.7. If an opposing party had an attorney or other representative of record in the proceeding before the Rent Administrator or Office of Administrative Hearings, service shall be made upon both the party and also the representative unless the representative entered a limited appearance or withdrew the appearance.

3802.5 A notice of appeal shall be formatted in accordance with § 3801.13, and shall contain the following:

(a) The name and address of the appellant and the status of the appellant (*e.g.*, housing provider, tenant, or intervenor), the Rental Accommodations Division or Office of Administrative Hearings case number, and the date of the Rent Administrator's or Office of Administrative Hearings' order appealed from;

(b) A clear and concise statement of the alleged error(s) in the order of the Rent Administrator or the Office of Administrative Hearings; and

(c) All other information required by § 3801.14.

3802.6 The filing of a notice of appeal of a final order of the Rent Administrator or Office of Administrative Hearings shall stay the effect of the order in accordance with § 3805.

3802.7 After a notice of appeal has been filed, the Clerk shall request that the Rental Accommodations Division or the Office of Administrative Hearings certify and transmit the official record of the matter in accordance with § 3804.

3802.8 After the Clerk has requested the official record of a case, the Clerk may issue an order of the Commission scheduling the case for mediation in accordance with § 3829.4.

3802.9 After the Clerk receives the certified record of a case, the Clerk shall issue an order of the Commission setting dates for briefing and oral argument ("Scheduling Order") as follows, unless an extension of time is granted in accordance with § 3815:

(a) The appellant (or cross-appellee) may file an initial brief on or before a date no more than thirty (30) days from the issuance of the Scheduling Order;

(b) The appellee (or cross-appellant) may file a responsive brief on or before a date no more than thirty (30) days from the date the initial brief is due;

(c) The appellant (or cross-appellee) may file a reply to the responsive brief on or before a date no more than ten (10) days from the date the responsive brief is due; and

(d) Oral argument in accordance with § 3819 shall be scheduled for a date no less than fifteen (15) days from the date the reply is due.

3802.10 Arguments submitted to the Commission shall be as follows:

(a) An initial brief shall contain a statement of the issues raised in the notice of appeal and, with respect to each issue, a discussion of the party's position

and citations to the relevant laws, cases, statutes, regulations, and parts of the record that support the argument;

(b) A responsive brief shall contain a statement of the arguments made in the initial brief that the party wishes to rebut and, with respect to each argument, a discussion of the party's counter-arguments and citations to the relevant laws, cases, statutes, regulations, and parts of the record that support the counter-argument, and, in the event of a cross-appeal, shall include argument as appropriate to an initial brief by the cross-appellant;

(c) A reply shall contain no more than a statement of the arguments made in the responsive brief that the party wishes to rebut and with respect to each argument, a discussion of the party's counter-arguments and citations to the relevant laws, cases, statutes, regulations, and parts of the record that support the counter-argument; and

(d) Oral argument may address any issue raised on appeal or addressed in any filing previously submitted.

3802.11 Failure to file any brief permitted by this section shall not waive a party's rights or position on any issue raised in a notice of appeal. However, if a party files a brief and does not address all issues raised in its own notice of appeal, the party will be deemed to have waived any issue not addressed.

3802.12 No party shall file any supplemental brief or points of authority except:

(a) By leave of the Commission for good cause shown;

(b) Upon the issuance of a new, relevant decision or order by a court or agency in the District of Columbia after the time to file any brief otherwise permitted has elapsed;

(c) Upon a relevant development in a related judicial or administrative proceeding involving one or more parties to the matter before the Commission; or

(d) By order of the Commission issued on its own initiative.

3802.13 At any time before an initial brief is due pursuant to a Scheduling Order, any party may move for summary affirmance or reversal of the final order being appealed if the basic facts are both uncomplicated and undisputed and the decision being appealed rests on a narrow and clear-cut issue of law. The filing of a motion for summary disposition shall stay the deadlines provided in a Scheduling Order, unless otherwise ordered by the Commission. A party may cross-move for summary disposition in lieu of a response to a motion for summary disposition. A party that moves for summary disposition may indicate in its motion that, if summary disposition is denied, the motion may be treated as the party's brief.

3802.14 At any time but no later than ten (10) days after a reply is due pursuant to a Scheduling Order, any party may move to have the appeal submitted for the Commission's decision on the papers without oral argument. If and only if all parties agree, the case will be deemed submitted on the scheduled date of the hearing or, if no Scheduling Order has been issued yet, a Scheduling Order shall be issued stating that the case will be deemed submitted the day after the reply is due. A motion to submit on the papers shall not waive the right to present oral argument if the opposing party does not agree or the motion is denied.

3802.15 A party's failure to appear for a scheduled oral argument may result in sanctions including dismissal of an appeal, in accordance with § 3819.

3802.16 The Commission, on its own initiative or on the motion of an appellee, may dismiss an appeal if the appellant fails to comply with the requirements of §§ 3802.2, .3(a), .4, or .5; provided, that an order determining that a notice of appeal does not contain a clear and concise statement of error as required by § 3802.5(b) shall only be issued by a quorum of the Commission. The Commission shall dismiss an appeal if it becomes apparent at any time that the Commission lacks jurisdiction.

3803 SERVICE OF PLEADINGS, MOTIONS, AND OTHER DOCUMENTS

3803.1 All pleadings, motions, and other documents required to be served on any person under this chapter shall be served on that person or shall be served on the representative designated by a party, as provided in § 3812, in the manner provided in this section.

3803.2 When a party has a representative of record as provided in § 3812, service shall be made upon the representative.

3803.3 Notwithstanding § 904(a) of the Act (D.C. Official Code § 42-3509.04(a)), for the purposes of this chapter, service upon any person or representative shall be completed only:

(a) By handing the document to the person, by leaving it at the person's place of business with a responsible person in charge, or by leaving it at the person's usual place of residence with a person of suitable age and discretion;

(b) By first class mail of the United States Postal Service, properly stamped and addressed;

(c) By electronic mail ("e-mail") attachment in Portable Document Format (".pdf" file type) or Microsoft Word format (".doc" or ".docx" file types); provided, that the prior, written consent of the person to be served to electronic service has been filed with the Commission, the Rent

Administrator, or the Office of Administrative Hearings in the course of the proceeding for which service is made; or

(d) By any other means that is in conformity with an order of the Commission in the course of the proceeding for which service is made.

3803.4 Actual receipt of service shall bar any claim of defective service, except for a claim with respect to the timeliness of service. A party that consents to service by e-mail is responsible for monitoring its e-mail account, including any "junk" or "spam" folders, and a party that fails to do so will not be excused from having actually received service.

3803.5 Service by mail of the U.S. Postal Service shall be complete upon mailing. Service by e-mail attachment shall be complete upon transmission by the serving party's e-mail system, unless the party promptly receives a notice that the message has been delayed or disrupted by technical failure or defect, and the failure or defect is not within the control of the receiving party (for example, a "full mailbox" is within a receiving party's control).

3803.6 Pleadings, motions, and other documents shall be served on the other party or parties prior to or at the same time as they are filed with the Commission.

3803.7 Every pleading, motion, and other document filed with the Commission shall include a signed statement that it was served as required, which shall be captioned as a "certificate of service" and shall show the date, name of the person(s) served, address at which service was made, and the manner of service, and:

(a) If service is made by a process server, proof of service shall be in an affidavit showing the date, the person served, address at which service was made, the manner of service, and the name and address of the process server; or

(b) If service is made by e-mail attachment, proof of service shall show the date and time of service, the e-mail address of the person served, the name of the person serving, and the e-mail address used to send the attachment.

3804 RECORD ON APPEAL: FILING, COMPOSITION, NOTICE, AND CORRECTION

3804.1 Upon receipt of a notice of appeal pursuant to § 3802.2 or the initiation of a review by the Commission pursuant to § 3808.1, the Clerk shall request in writing that the Rent Administrator or the Office of Administrative Hearings forward the official record of the proceeding.

3804.2 The Rent Administrator or the Office of Administrative Hearings, within sixty (60) days of the request by the Clerk, shall furnish to the Commission a written or

electronic copy of the official record of the proceeding and shall certify that the copy is complete ("certified record").

3804.3 The official record of a proceeding shall consist of the following:

(a) The final order and any other orders or notices issued by the Rent Administrator or the Office of Administrative Hearings;

(b) The recordings and transcripts, if any, of all hearings before the Administrative Law Judge;

(c) All papers and exhibits offered into evidence, if any, at the hearing before the Administrative Law Judge, including any files and documents found in the public record of which the Administrative Law Judge took official notice;

(d) All papers filed by the parties with the Rent Administrator and all papers filed by the parties or the Rent Administrator at the Office of Administrative Hearings; and

(e) Memoranda, if any, of *ex parte* communications as required by § 3916.

3804.4 If it is determined, on the Commission's initiative or by motion of a party, that any material part of the record is not complete, omitted from, or misstated in the certified record, the parties may at any time, by stipulation, supply any omission from the record or correct a misstatement, or any Commissioner may direct the Clerk to obtain a recertified copy of the official record to supply the omission or correct the misstatement. Recertification of the record of a case shall not change the scheduled time for parties to file briefs unless the Commissioner determines that a party's opportunity to present arguments has been prejudiced by the omission or misstatement.

3805 STAY PENDING APPEAL

3805.1 Except as provided by § 3805.2 and .3, or if a motion for reconsideration is filed, a final order of the Rent Administrator or Office of Administrative Hearings shall be effective, and all parties shall be required to comply with the order, from the date it is issued, regardless of whether an appeal of that order is filed with the Commission.

3805.2 A final order that directs the payment of a specific amount of money, including rent refunds, fines, or attorney's fees, shall be automatically stayed by the timely filing of a notice of appeal to the Commission.

3805.3 A final order that directs a housing provider to implement a rent rollback, that authorizes a housing provider to implement a rent increase, or that authorizes a housing provider to take any other action for which administrative approval is

required may be stayed while an appeal is pending if a party files a motion requesting a stay and the motion is granted.

3805.4 A motion for a stay pursuant to § 3805.3 may be filed with the Office of Administrative Hearings, in accordance with 1 DCMR § 2830, before the Commission takes jurisdiction pursuant to § 3802.3 of this chapter.

3805.5 A motion for a stay pursuant to § 3805.3 may be filed with the Commission in accordance with § 3814 after the Commission takes jurisdiction of a case pursuant to § 3802.3.

3805.6 If a party appeals from the Commission to the District of Columbia Court of Appeals, within thirty (30) days of a decision and order by the Commission that affirms a final order, or any other order by the Commission that dismisses the appeal of the final order, the party that seeks or intends to seek judicial review may file a motion with the Commission to request a stay pending judicial review. The party may also request a stay from the District of Columbia Court of Appeals in accordance with D.C. App. R. 18.

3805.7 A motion for a stay under this section shall inform the Commission whether any related matter is pending in the Courts of the District of Columbia and the status of the matter, including payments into the Court's registry or stays of eviction proceedings, or of any administrative order allowing or requiring payments into an escrow account.

3805.8 Any party may request in a motion for a stay or in response to a motion for a stay, or the Commission on its own initiative may order, that the stay only be granted on the condition that a disputed amount of money be guaranteed for later payment in accordance with § 3806.

3805.9 If a housing provider appeals a decision that authorizes the housing provider to implement a rent adjustment less than the amount requested by the housing provider in its petition, and the order approving the adjustment is not stayed pending review, the housing provider shall not charge any affected tenant any rent in excess of the amount authorized in the decision, in accordance with § 216(l) of the Act (D.C. Official Code § 42-3502.16(l)).

3805.10 A motion for a stay pending judicial review shall be decided by the Commission within fifteen (15) days. If the Commission does not act on the motion within that time, it shall be deemed denied. A motion for a stay of a final order of the Rent Administrator or Office of Administrative Hearings may be decided by a single Commissioner. A motion for a stay of a Commission decision pending judicial review shall only be granted by a quorum of the Commission.

3805.11 The Commission shall consider the following factors in deciding a motion for a stay :

(a) Whether the party filing the motion is likely to succeed on the merits of the appeal;

(b) Whether and to what degree denial of the stay will cause irreparable injury to the party filing the motion;

(c) Whether and to what degree granting the stay will injure other parties; and

(d) Whether the public interest favors granting a stay.

3805.12 Any stay of a final order of the Rent Administrator or Office of Administrative Hearings that has been appealed to the Commission shall be automatically lifted, and the final order shall become effective, fifteen (15) days after the issuance of a final decision and order by the Commission that affirms the stayed order, or any other order by the Commission that dismisses the appeal of the stayed order, unless a motion for reconsideration or modification is filed pursuant to § 3823.

3805.13 A party may file an application for entry of the final order as a judgment in accordance with Superior Court Civil Rule 12-I(b)(1)(G) or otherwise commence a civil action in the Superior Court of the District of Columbia or file a tenant petition under § 4214, and fines may be imposed pursuant to § 901 of the Act (D.C. Official Code § 42-3509.01), if any other party fails to comply with an order that is not stayed or takes any action pursuant to an order that is stayed.

3806 ESCROW ACCOUNTS AND SUPERSEDEAS BONDS

3806.1 While an appeal is pending before the Commission, in order to guarantee later payment of a disputed amount of money, any party may request that a party that has been ordered to pay a specific amount of money, including rent refunds, fines, or awards of attorney's fees, shall be required to deposit the amount into an escrow account or obtain a supersedeas bond as a condition of the appeal or of a stay of the final order.

3806.2 At the same time a party seeking or intending to seek judicial review by the District of Columbia Court of Appeals requests a stay pursuant to § 3805.6, the moving party may request that an amount of money disputed in the appeal be guaranteed for later payment by the means provided in this section.

3806.3 The Commission shall not issue any order respecting the ongoing payment of a disputed amount of rent pending appeal. If an appeal involves a disputed amount of ongoing rent due, such as a rent rollback or approval of a housing provider's petition for a rent increase, a party may request the entry of a protective order in the Superior Court of the District of Columbia for the payment of all or part of the rent into the Court's registry in accordance with the Court's rules and on such terms as the Court may require.

3806.4 The Commission may, on its own initiative, order that any appeal or stay of a final order be conditioned on a guarantee of later payment of an amount of money disputed in the appeal, by the means provided in this section.

3806.5 If the Commission has ordered a party to provide a guarantee of later payment in accordance with this section, an appeal filed by that party may be dismissed for failure to comply.

3806.6 An escrow account required under this section shall:

(a) Be held by a bank or other financial institution within the District of Columbia;

(b) Pay the prevailing rate of interest;

(c) Be outside the control of the party depositor; and

(d) Not be released in any way other than as ordered by the Commission.

3806.7 Within a time period established by order of the Commission, a party required to establish an escrow account under this section shall file a copy of the escrow agreement with the Commission and serve a copy on all other parties.

3806.8 The Commission may order that any escrow fees imposed by the bank or financial institution shall be paid or refunded by a party that does not prevail in an appeal.

3806.9 A party required to guarantee the later payment of a specific amount of money may obtain a supersedeas bond through a surety or other financial institution in the amount the party would otherwise be required to deposit into escrow, plus ten percent (10%), which shall be applied towards any interest that may accrue under § 3826.

3806.10 A party obtaining a supersedeas bond shall file a copy of the bond with the Commission and serve a copy on all other parties within the time period established under § 3806.7.

3806.11 Nothing in this section shall relieve a party of an obligation to pay interest in the amount that may be owed under § 3826 on an order to pay a rent refund or award of attorney's fees; provided, that any interest accrued in escrow shall be taken against that obligation first, and excess interest earned, if any, shall be refunded to the depositing party.

3806.12 An order pursuant to this section may be issued by a single Commissioner.

3807 STANDARD OF REVIEW

3807.1 The Commission shall reverse a final order of the Rent Administrator or the Office of Administrative Hearings that the Commission finds to be based upon arbitrary action, capricious action, or an abuse of discretion, or which contains conclusions of law not in accordance with the provisions of the Act or findings of fact unsupported by substantial evidence on the record of the proceedings before the Rent Administrator or the Office of Administrative Hearings.

3807.2 Interlocutory appeals shall be reviewed pursuant to the provisions found at § 3922 of this title for an order by the Rent Administrator or at 1 DCMR § 2936 for an order by the Office of Administrative Hearings. The Commission shall assign interlocutory appeals priority and may schedule interlocutory appeals for hearing.

3807.3 The Commission shall rule on an interlocutory appeal as follows:

(a) On the merits of the appeal based upon 14 DCMR § 3922 for an order by the Rent Administrator or at 1 DCMR § 2936 for an order by the Office of Administrative Hearings; or

(b) By dismissing the interlocutory appeal without prejudice to the issue being determined in the final order by the Rent Administrator or the Office of Administrative Hearings if the Commission determines that the motion was incorrectly certified under the applicable rules.

3807.4 Review by the Commission shall be limited to the issues raised in the proceedings below and in the notice of appeal; provided, that the Commission may correct plain error or minor, technical mistakes on its own initiative.

3807.5 The Commission shall not receive new evidence on appeal.

3808 COMMISSION-INITIATED REVIEWS

3808.1 After the time for any party to file a notice of appeal has expired pursuant to § 3802.2, the Commission may, within thirty (30) days, initiate a review of any final order of the Rent Administrator or the Office of Administrative Hearings if the Commission has reason to believe that the order may be erroneous in any material way.

3808.2 The Commission shall serve the parties and representatives of record, if any, who appeared before the Rent Administrator or the Office of Administrative Hearings, with its reasons for initiating a review ("Notice of Commission Review").

3808.3 A Notice of Commission Review shall provide:

(a) A clear and concise statement of any issue(s) that may have been erroneously decided by the Rent Administrator or Office of Administrative Hearings; and

(b) An statement that the record will be requested in accordance with § 3804, whether the final order is stayed in accordance with § 3805, and that a scheduling order will be issued in accordance with § 3802.9.

3808.4 The Commission shall provide each party the right to present arguments in accordance with § 3802. The party adversely affected by the issue(s) identified by the Commission shall be treated as the appellant, or the Commission may treat the issue(s) as cross-appealed.

3808.5 Any party may move at any time after the Commission has initiated a review to dismiss the review. A motion to dismiss shall not waive any right to relief that a party may have if the Commission does not dismiss the review and ultimately decides the issue in that party's favor.

3808.6 Any party may move, prior to the due date of the initial brief, for summary affirmance or reversal of the final order.

3808.7 A Notice of Commission Review shall only be issued by order of a quorum of the Commission.

3808.8 The Commission shall reverse a final order under this section only where the Commission determines that the order contains an error of law or clearly erroneous findings of fact. Neither a party that prevailed before or adversely affected by the decision of the Rent Administrator or Office of Administrative Hearings shall bear the burden of proving that the order or the disposition of the issue should be affirmed or reversed.

3809 PARTIES

3809.1 A case before the Commission shall be captioned as each appellant versus each appellee, and shall designate the intervenor, if any. If the Commission has initiated the review or if a petition has been adjudicated by the Office of Administrative Hearings without an opposing party, the case shall be captioned as regarding the petition of the party that initiated the case ("In re Petition of [Name]").

3809.2 In the event of the death, dissolution, reorganization, or change of ownership or interest of a party, the Commission may, upon its own motion when such an event is suggested on the record, or upon the motion of a party, substitute or add a person, including a trust or representative of the party's estate, as a party to the appeal.

3809.3 If it appears to the Commission that the identity of the parties has been incorrectly determined by the Rent Administrator or the Office of Administrative Hearings, the Commission may substitute or add the correct parties on its own motion.

3809.4 No substitution or addition of parties shall occur unless all current and proposed parties are served with the motion in accordance with § 3803 and given an opportunity to file written arguments in support of or in opposition to a motion for substitution of parties. The Commission may require a current or proposed party to submit evidence establishing the relationship or interest of the party to be substituted.

3809.5 If an appeal is filed against an order of the Rent Administrator that is issued without an opposing party, the case shall be captioned as being in the matter of the appellant. The Rent Administrator shall be permitted to intervene by right in such a case.

3810 INTERVENORS AND AMICUS CURIAE BRIEFS

3810.1 Any person that is not a party to an appeal, but that has a direct, substantial, and personal interest in a case pending before the Commission, may file in writing a motion for leave to intervene.

3810.2 A motion to intervene shall be filed at any time before the Commission issues a scheduling order in accordance with § 3802.9 and shall describe in detail the position and interest of the moving party and the grounds of the proposed intervention.

3810.3 Any party may file an opposition to a motion to intervene in accordance with § 3814.

3810.4 If the Commission grants a motion to intervene, it may attach conditions to the participation of the moving party. The Commission shall issue a scheduling order in accordance with § 3802.9 by which the intervenor's briefing will be due on the same date(s) as the party on whose side the intervenor has joined. Time at oral argument may be divided between a party and an intervenor with the party's agreement.

3810.5 Any officer or agency of the District of Columbia may file an amicus brief in a pending appeal without leave of the Commission or consent of the parties. Any other amicus brief may be filed only with the leave of the Commission by filing a motion before a scheduling order has been issued in accordance with § 3802.9.

3810.6 A party moving to file an amicus brief shall seek consent of all parties to the appeal and shall file a motion stating its interest in the case and why the filing of a brief is desirable and why the brief will be relevant to the disposition of the case.

3810.7 An amicus brief shall be due on the same date the responsive brief is due pursuant to the scheduling order or pursuant to any extension of time granted. The appellee may file a reply to an amicus brief on the same day the appellant's reply brief is due, and the appellant's reply brief may address issues raised by the amicus brief.

An amicus curiae shall not file any reply and shall not be granted time for oral argument.

3810.8 The Commission may modify the timing and manner of argument provided in §§ 3810.4 or 3810.7 for good cause.

3811 CONSOLIDATION OF APPEALS

3811.1 If two (2) or more parties are entitled to an appeal from an order of the Rent Administrator or the Office of Administrative Hearings, and their interests are such as to make consolidation practicable, they may file a joint notice of appeal, or may move to consolidate their separate appeals by a motion to consolidate.

3811.2 Appeals may be consolidated by the Commission upon its own motion, or upon a motion of a party, and any party to an appeal that is proposed to be consolidated may file an opposition to the motion.

3812 APPEARANCES AND REPRESENTATION

3812.1 In any appeal before the Commission, a party may be represented as follows:

(a) Any person may be represented by an attorney or other person who may provide legal services in accordance with § 3812.8;

(b) An individual or a beneficiary of a trust may appear on his or her own behalf;

(c) A trustee, receiver, executor, or administrator may appear on behalf of a trust or estate;

(d) A guardian, next friend of a minor, or other person authorized by statute to do so may represent another person;

(e) An individual may appear on behalf of a corporation, limited liability company, or other business entity if the individual is an executive, director, officer, manager, proprietor, general partner, or other authorized decision-maker for the entity; or

(f) A tenant or a group of tenants may be represented by a tenant association, whether incorporated or not; provided, that:

(1) A statement is filed with the Commission or has been filed in the record that each tenant consents to the representation and that the association consents to represent the tenant;

(2) Neither the tenant nor the tenant association has revoked consent to the representation; and

(3) The association is represented by an attorney or other person who may provide legal services in accordance with paragraph (a) or by a member of the tenant association selected by the members through a process that can be documented in accordance with § 3812.5.

3812.2 Any individual who wishes to appear in a representative capacity before the Commission shall file a written notice of appearance stating the individual's name, local address, telephone number, District of Columbia Bar identification number, if applicable, and for whom the appearance is made. Written notice may be filed concurrently with a notice of appeal or any other pleading.

3812.3 An attorney or other representative of record who is served with any documents related to a matter before the Commission, but who does not wish to or is no longer representing the party before the Commission, shall immediately notify the party of the service and, if the attorney or representative has entered an appearance before the Commission, shall file a motion to withdraw in accordance with § 3813.

3812.4 An attorney or other representative may limit the scope of his or her appearance by specifying in the notice of appearance the date, time period, activity, or subject matter for which the appearance is made. A limited appearance shall terminate automatically, notwithstanding § 3813, upon the date or end of the time period specified, or upon the filing of a notice of completion with the Commission and service of the notice upon all parties.

3812.5 Any person appearing before or transacting business with the Commission in a representative capacity may be required by order of the Commission to establish the authority to act on behalf of the represented party by affidavit, written authorization, bylaws of an organization, or other proof the Commission may deem sufficient.

3812.6 A party who appears on his or her own behalf as provided in § 3812.1(b) may be assisted by a family member or close personal friend, where the party is incapable of presenting his or her case because of a language barrier or physical, mental, or intellectual disability.

3812.7 Nothing in this section shall prohibit the provision of technical assistance by a non-profit community service agency or the Office of the Tenant Advocate.

3812.8 A person may be represented by an attorney or other person who may provide legal services if the attorney or provider is:

(a) An active member in good standing of the District of Columbia Bar or is otherwise authorized to practice law pursuant to Rule 49(c) of the Rules)of the District of Columbia Court of Appeals ("D.C. App. R.");

(b) Admitted to practice before the highest court of any state upon the granting by the Commission of a motion to appear *pro hac vice*; or

(c) A law student or recent graduate who is practicing under the supervision of an attorney and who is admitted to practice in the District of Columbia in compliance with D.C. App. R. 48, with or without being enrolled in a clinical program.

3812.9 An attorney wishing to appear *pro hac vice* in accordance with § 3812.8(b) shall file a motion in which the attorney shall make, under penalty of perjury, all declarations required for admission *pro hac vice* in the Courts of the District of Columbia under D.C. App. R. 49(c)(7) and that the attorney has read the rules of the Commission in 14 DCMR chapter 38.

3812.10 A law student or recent graduate wishing to appear as an attorney in accordance with § 3812.8(c) shall:

(a) Meet all requirements of D.C. App. R. 49(b) and (c);

(b) Have the consent and oversight of a supervising attorney assigned to the law student;

(c) Sign a notice of appearance in the case with the supervising attorney and file such notice with the Commission;

(d) Have the written permission of the client, which must be filed in the record;

(e) Not file any paper unless the law student and supervising attorney sign it;

(f) Not appear at any proceeding without the supervising attorney present;

(g) Comply with any limitations ordered by the Commission.

3812.11 An attorney who has appeared *pro hac vice* before the Office of Administrative Hearings pursuant to 1 DCMR § 2833 or the Rental Accommodations Division pursuant to § 3819 of this title may appear before the Commission in the same matter without filing a new motion or notice to so appear.

3812.12 An individual whose practice or appearance before the Rental Accommodations Division or the Office of Administrative Hearings has been restricted shall be subject to the same restriction before the Commission.

3812.13 The Commission may disqualify or deny, temporarily or permanently, the privilege of appearing or practicing before the Commission to any individual who is found by the Commission, after notice and an opportunity to respond, either to be lacking in the requisite qualifications to represent others or to have engaged in unethical,

improper or unprofessional conduct; provided, that any individual who is appearing or practicing before the Commission who willfully misleads the Commission or its staff by a false statement of fact or law shall be disqualified permanently.

3812.14 An attorney who fails to comply with the provisions of the Rules of Professional Conduct may be referred to the Office of Bar Counsel or may be disqualified from appearing before the Commission.

3812.15 An individual appearing before the Commission who is or ever has been a member of the District of Columbia Bar or the bar of any state shall be subject to the standards of conduct for an attorney under this section, regardless of whether that person appears as a non-attorney representative; provided, that nothing in this subsection shall prohibit an individual, receiver, or beneficiary from appearing *pro se* in accordance with § 3812.1(b).

3812.16 In the event of any conflict between this section and D.C. App. R. 48 or 49, the D.C. App. R. shall control. If the D.C. App. R. would permit an individual to appear before a tribunal but this section would not, the individual may appear unless that individual's practice or appearance has been specifically restricted for other reasons or the individual fails to make any required filings with the Commission. Except to the extent permitted by D.C. App. R. 49(c)(5), allowing District agencies to regulate non-attorney practice, an individual not authorized to practice law in the District of Columbia may not appear in a representative before the Commission.

3813 WITHDRAWAL OF APPEARANCE

3813.1 If an attorney or other person representing a party wishes to withdraw from a case pending before the Commission, a written motion to withdraw shall be filed in accordance with § 3814.

3813.2 An attorney or other representative who has not been granted leave to withdraw shall remain the representative of record.

3813.3 If an attorney or other representative who has not been granted leave to withdraw fails to attend a Commission hearing or respond to a notice or pleading, the attorney may be subjected to the provisions of §§ 3812.13, 3812.14, or 3812.15.

3813.4 A motion to withdraw an appearance shall contain a statement of the following:

(a) Whether the party will be unrepresented or will have substitute representation, and whether the absence of representation will prejudice the rights of the party.

(b) Whether the party consents in writing to the motion, or opposes the motion in writing or otherwise;

(c) If the party has not obtained substitute representation, certification that the attorney or representative filing the motion has:

(1) Notified the party of the intent to withdraw and of the party's opportunity to oppose the motion, and advising the party to obtain other counsel or representation prior to filing the motion; and

(2) Provided the party with the list of legal resources published by the Rental Accommodations Division; and

(d) A current name, address, and phone number or e-mail address for either the unrepresented party or for the party's substitute representation, if any has been obtained.

3813.5 The Commission shall decide a motion to withdraw an appearance promptly and may deny the motion if it does not comply with the requirements of this section or if withdrawal would unduly delay the case, would be unduly prejudicial to any party, or would otherwise not be in the interests of justice.

3813.6 If an attorney or other representative's motion for leave to withdraw does not include the contact information required by § 3813.4(e), the motion may be granted if it contains a certification that the party has ceased communication and that the representative has been unable to obtain the information after a good faith effort to do so.

3814 MOTIONS

3814.1 A request for the Commission to take a particular action shall be made by filing a written motion or making a motion orally at a hearing, unless a rule in this chapter requires that the particular type of motion be made in writing. If the Commission does not rule on the motion during the hearing at which it is made, the Commission may request that the moving party additionally file the motion in writing.

3814.2 Motions made in writing shall be filed with the Commission in accordance with § 3801 and served on other parties in accordance with § 3803.

3814.3 A written motion may be filed at any time unless the time for filing a specific type of motion is prescribed by the rules in this chapter or the provisions of the Act.

3814.4 The party making a motion shall have the burden of proving that the requested action is warranted. A written motion shall state the legal and factual reasons why the Commission should take the requested action, and a separate memorandum of points and authorities does not need to be filed.

3814.5 When a motion is based on information not on the record, a party may support or oppose the motion by attaching affidavits, declarations, or other papers. The

Commission may order a party to file supporting affidavits, declarations, or other papers.

3814.6 Before filing any motion, except a motion to dispose of an appeal or for reconsideration of a final decision and order, a party must make a good faith effort to ask all parties if they agree to the motion. The motion shall state what effort was made and whether all other parties agreed to the motion.

(a) A "good faith effort" means a reasonable attempt, considering all the circumstances, to contact a party or representative in person, by telephone, by fax, by e-mail, or by other means.

(b) Contact by U.S. mail is a good faith effort only if no other means is reasonably available (for example, not having another party's telephone number or e-mail address).

(c) By itself, serving a party with the motion is not a good faith effort to ask if the party agrees to the motion.

(d) If a party fails to make a good faith effort to seek agreement, the Commission may deny the motion without prejudice.

3814.7 Any party may file a response to a motion within ten (10) days after service of the motion. No further filings related to the motion are permitted unless ordered by the Commission.

3814.8 The Commission, in its discretion, may schedule any motion for an oral hearing if requested by the moving party or may decide any motion without a hearing.

3814.9 A motion for expedited hearing or other form of expedited relief shall be acted upon promptly.

3814.10 The Commission shall grant or deny each motion by issuing a written order that shall be served on all parties, or a party's representative of record, by U.S. mail or by e-mail attachment in accordance with § 3803.3. The Commission may grant or deny an oral motion by order at a hearing on the record; provided, that the order shall be promptly followed by a written order in accordance with this subsection.

3814.11 In accordance with §§ 3800.4 and 3800.6, an order on any motion shall be issued by a quorum of the Commission unless a provision in this chapter states that the specific type of action requested in the motion may be ordered by a single Commissioner.

3815 CONTINUANCES, LATE FILINGS, AND AMENDMENT OF PLEADINGS

3815.1 Any party may request, by motion, a continuance of a scheduled hearing at least five (5) days before its scheduled date. The motion shall propose at least two (2)

new dates and times for the scheduled hearing that are no more than thirty (30) days from the original scheduled date. The motion shall state that the party filing the motion has sought the consent of all other parties prior to filing. A party may request a continuance of a hearing without meeting the requirements of this subsection only in extraordinary circumstances.

3815.2 When a party is allowed to or required to make a filing or take any other action within a specific time period under this chapter or an order of the Commission, the party may request, by motion, an extension of the time period, even after the period has expired.

3815.3 Notwithstanding § 3815.2, the Commission shall not extend the time for filing of a notice of appeal unless equitable tolling of the time is warranted by the specific facts of the case, including that there is no unexplained or undue delay by the appellant and that there is no prejudice to the appellee.

3815.4 A motion under this section shall set forth good cause for the extension. A continuance of a particular hearing or an extension of time to make a particular filing shall be granted liberally the first time requested, and subsequent requests or recurring motions by a party shall be strictly limited.

3815.5 A motion filed under this section shall be filed in writing in accordance with § 3814, including a certification of good faith effort to obtain agreement of all parties pursuant to § 3814.5.

3815.6 A pleading that has been untimely filed may be treated as timely filed with the consent of all parties or may be struck on the Commission's own motion or by motion of a party.

3815.7 A party may request, by motion, leave to amend a pleading that has already been filed, other than a notice of appeal, to correct a misstatement of law or fact or to raise an argument that would otherwise be waived, at any time for good cause shown. A party may amend a pleading for any reason, without leave of the Commission, if the time to file the pleading has not yet expired.

3815.8 A motion to amend a pleading shall set forth the proposed amendment(s) and may be granted if the Commission determines that no prejudice to an opposing party's opportunity to respond to the moving party would result.

3816 CALCULATION OF DEADLINES

3816.1 Where this chapter or any order of the Commission specifies a time period, any reference to "days" shall mean all calendar days, unless specifically designated as "business days."

3816.2 "Business days," where expressly used in this chapter or by order of the Commission, shall be all days other than Saturdays, Sundays, legal holidays

codified at D.C. Official Code § 1-612.02, furlough days, and other closed days as designated by the District of Columbia Government.

3816.3 In calculating any time period specified by this chapter or by order of the Commission, the day of the act, event, or default from which the time period begins to run shall not be included.

3816.4 In calculating any time period specified by this chapter or by order of the Commission, the last day of the period shall be included, unless it is not a business day, in which case the period shall end on the next business day.

3816.5 In accordance with § 3803.5, a party's obligation to serve any pleading, motion, or other document on another person, if done by U.S. mail, shall be deemed complete on the date of mailing.

3816.6 If a party is permitted or required to act within a specified time period after an event, such as the issuance of any order or the service of a motion by another party, if the party has been served with the order, pleading, motion, or other document by U.S. mail, five (5) days shall be added to the time period for the party to act.

3816.7 In accordance with § 3801.2, a party's obligation to file any pleading, motion, or other document with the Commission shall only be deemed complete upon actual receipt by the Commission during its business hours, regardless of how the filing is made.

3816.8 The Commission may enlarge the time period specified, either on motion by a party or on its own initiative in accordance with § 3815; provided, that the Commission shall not enlarge the time for filing a notice of appeal.

3817 SUBPOENAS

3817.1 The Commission may issue a subpoena requiring the production of documents or the attendance and testimony of witnesses, or a subpoena may be issued by the Commission on its own initiative.

3817.2 A subpoena issued by the Commission shall:

(a) Be issued in writing;

(b) Specify with particularity the books, papers, testimony, or electronic records desired; and

(c) Be served on the subject at least ten (10) days before a hearing is scheduled or production of materials is required.

3817.3 A subpoena may be served in the same manner and by any person authorized by the civil rules of the Superior Court of the District of Columbia; provided, that no witness fees are required.

3818 EX PARTE COMMUNICATIONS

3818.1 An *ex parte* communication is any oral or written communication that is:

(a) To or by a Commissioner or member of the Commission's staff;

(b) Regarding the merits or factual substance of a particular case; and

(c) Not made:

(1) At a scheduled hearing;

(2) In a filing that is also served on all required parties; or

(3) With reasonable prior notice and opportunity, under the circumstances, for all parties to be present for, to be a party to, or to be simultaneously made aware of the contents of the communication.

3818.2 *Ex parte* communications shall be prohibited unless:

(a) The communication is specifically authorized by law;

(b) The communication is regarding administrative or procedural matters, and any reference to the merits is merely incidental; or

(c) The communication is made in the course of another proceeding of the Commission to which the communication primarily relates, and which is on the public record.

3818.3 *Ex parte* communications regarding a particular case shall be prohibited any time after the petition initiating the case has been filed with the Rent Administrator and until the time that all possible appeals of the case are completed.

3818.4 Any *ex parte* communication made in violation of this section that comes to the attention of the Commission shall be made part of the record, and the Commission shall provide an opportunity for rebuttal by other parties by serving each party with a copy of any such communication or a memorandum describing the communication, within five (5) days of the communication.

3818.5 If the Commission determines that a communication was knowingly made (or caused to be made) by a party acting in violation of this section, the Commission may, to the extent consistent with the interest of justice and applicable law, require

the party to show cause why his or her appeal, claim, or interest in the proceeding should not be dismissed, denied, or otherwise adversely affected.

3819 HEARINGS

3819.1 In hearing appeals, the Commission shall sit as a body with a quorum of the Commission present. All hearings shall be conducted as meetings on the record in accordance with §§ 3800.4-3800.8, and at the conclusion of all permitted arguments at the hearing, the Commission may enter into closed session to deliberate on the appeal.

3819.2 The Commission shall schedule each appeal for oral argument in accordance with § 3802.9, unless all parties agree to submit the case for decision solely on written arguments in accordance with § 3802.14.

3819.3 The Commission, in its discretion, may schedule additional hearings to allow the parties to an appeal to present arguments on a pending motion or any other matter related to the appeal.

3819.4 All parties to an appeal shall appear, personally or through a representative in accordance with § 3812, for all properly noticed hearings, unless the Commission grants a request for a continuance as provided in § 3815.

3819.5 If an appellant fails to appear for a hearing on the merits of an appeal, the appeal may be dismissed for want of prosecution; provided, that the appellee may present arguments at that time without prejudice to any motion to dismiss.

3819.6 If an appellee fails to appear for a hearing on the merits of an appeal, the Commission may commence the hearing and deem the appellee's opportunity to present oral argument as waived.

3819.7 If any party fails to appear for a hearing on a motion or other matter, the Commission may deem party's position on the subject of the hearing to be withdrawn, conceded, consented to, stipulated, or otherwise unopposed.

3819.8 The appellant(s) and appellee(s) shall each be allowed a total of twenty (20) minutes to present oral argument on the merits of the issue(s) appealed to the Commission. The appellant(s) may reserve no more than five (5) minutes of the allotted time for rebuttal. The appellee(s) shall not be allowed to reserve any portion of its allotted time for rebuttal.

3819.9 When a cross-appeal is filed or an appeal is initiated by the Commission, each party shall have an opportunity to present oral argument on the issue(s) for twenty (20) minutes; provided, that each party may reserve a portion of no more than five (5) minutes of its allotted time for rebuttal to the oral argument made by the other party.

3819.10 In an order scheduling a hearing other than one on the merits of an appeal, the Commission shall specify whatever times for argument and rebuttal it deems appropriate to the subject(s) of the hearing.

3819.11 The Commission reserves the right to question the parties without diminishing the allotted time periods.

3819.12 If a party has been aggrieved by an order of the Commission due to a failure to appear for a Commission hearing, the Commission may set aside the order based on the following factors:

(a) Whether the party had actual notice of the hearing;

(b) Whether the party acted in good faith;

(c) Whether the party acted promptly upon notice of the order; and

(d) Whether the party presents a *prima facie* argument that it could have prevailed in the order.

3820 RECORDINGS AND TRANSCRIPTS

3820.1 The entire proceedings of Commission hearings and meetings on the record shall be recorded electronically and shall be permanently retained by the Commission.

3820.2 A copy of the recording of a public meeting or hearing, or public portion thereof, shall be made available for public inspection at the Commission's offices and on the Commission's website or the website of the Office of Open Government within seven (7) business days after the meeting or hearing.

3820.3 At the request of a party to an appeal, the Commission shall provide an additional copy of the recording of a public hearing on the appeal to the party.

3820.4 If a party to an appeal desires a transcript of the recording of the hearing, the cost of the transcript shall be borne by the party. If the party is unable to pay such costs without substantial hardship to himself or herself or his or her family, the Commission shall bear the costs of obtaining a transcript. An applicant for waiver of costs shall file a declaration with the Commission, and need not serve any other party, stating: the party's source(s) and amount(s) of income including public benefits; number of dependents; and approximate monthly expenses.

3820.5 A party that desires a transcript shall designate a qualified reporter or transcriber who is not a party or counsel to a party or otherwise related to or employed by a party or counsel in the case to transcribe the recording, and the Commission shall deliver an exact copy of the electronic recording directly to the qualified reporter or transcriber.

3820.6 A copy of a recording made for the purposes of §§ 3820.3 or 3820.5 shall be certified by the Commission as being an exact duplicate of the original electronic recording.

3820.7 A transcript of a certified duplicate copy of the electronic recording of a Commission hearing may be relied on in proceedings before the Commission only if:

(a) The qualified reporter or transcriber certifies the transcript as being complete, accurate, and based upon the certified duplicate copy; and

(b) Unless otherwise stipulated by the parties or ordered by the Commission, if a party cites to a portion of a transcript, the entire transcript of the case must be filed with the Commission, and a copy must be served on all parties.

3820.8 Any party to an appeal may seek corrections to a transcript by motion to the Commission filed within ten (10) days of receipt of the transcript.

3821 DECISIONS ON APPEALS

3821.1 Unless an appeal is otherwise dismissed pursuant to an order issued in accordance with this chapter, the Commission shall dispose of all appeals on the merits by issuing a final decision and order. Each final decision and order shall be issued by a majority vote of a quorum of the Commission at a public meeting on the record, in accordance with § 3800.4.

3821.2 A final decision and order shall be in writing and shall be signed by all participating Commissioners, whether concurring in or dissenting from the result.

3821.3 Upon the signing of a final decision and order, the Clerk shall serve a copy on all parties, or a party's representative of record, by U.S. mail, or by electronic mail attachment with the prior consent of the party, in accordance with § 3803.3.

3821.4 The Commission shall retain the original copy of each signed final decision and order, and a copy shall be made publicly available at the Commission's office, on the website of the Department of Housing and Community Development, and by electronic database through the Lexis service or other service as the Commission may deem suitable.

3821.5 The original and each copy of a final decision and order that is served on a party shall include a certificate of service that includes the following:

(a) The date and method of service;

(b) Names and addresses of the persons or parties on whom the decision was served; and

(c) The signature of the Commissioner or staff person completing the service.

3821.6 A decision and order of the Commission shall become final and effective on the date it is served on the parties; provided, that if a motion for reconsideration or modification is filed, the decision and order shall become final when the motion is granted or denied pursuant to § 3823.

3821.7 Any party aggrieved by a final decision and order of the Commission may obtain judicial review of the order by filing a petition for review in the District of Columbia Court of Appeals in accordance with its rules for review of agency orders.

3821.8 The effect of a final decision and order of the Commission shall not be stayed automatically by the filing of a petition for judicial review with the District of Columbia Court of Appeals. A party that seeks or intends to seek judicial review in the District of Columbia Court of Appeals may file a motion with the Commission to request a stay pending judicial review.

3821.9 A motion for a stay pending judicial review shall be made and decided in accordance with § 3805.

3822 REMANDS

3822.1 A remand is an order of the Commission to return a case on appeal, in whole or limited to one or more issues raised in the appeal, to the Office of Administrative Hearings or the Rent Administrator for further action.

3822.2 The Commission may order a remand of a case that it reverses, in whole or in part, based on its review of the record in accordance with § 3807.1 or by consent of the appellee(s) to a case.

3822.3 A remand order of the Commission may direct the Office of Administrative Hearings or the Rent Administrator to:

(a) Conduct further proceedings, which may include an evidentiary hearing before the Office of Administrative Hearings;

(b) Correct legal errors in the final order, including the interpretation or application of appropriate laws, regulations, cases, or legal standards;

(c) Revise and re-issue incomplete or legally insufficient findings of fact or conclusions of law; or

(d) Carry out any other corrective action that the Commission determines to be necessary with respect to the final order or procedural error.

3823 RECONSIDERATION OR MODIFICATION

3823.1 Any party adversely affected by a final decision and order of the Commission that affirms, reverses, or remands a case, or an order that dismisses an appeal, may file a motion for reconsideration or modification with the Commission within fifteen (15) days of service of the decision or order; provided, that an order issued on reconsideration is not subject to reconsideration.

3823.2 If any party files a motion for reconsideration or modification within the time provided in § 3823.1, the effect of the decision or order shall be stayed and the time for seeking judicial review of the decision or order shall not start to run until either the Commission rules on the motion or the motion is denied automatically by the expiration of the time provided in § 3823.4.

3823.3 A motion for reconsideration shall contain a short and plain statement of the specific grounds on which the moving party considers a final decision and order, an order that dismisses an appeal, to be erroneous or unlawful. Grounds for reconsideration shall be as follows:

(a) The moving party failed to appear at a Commission hearing, to respond to a motion of another party, or to respond to an order of the Commission and the failure resulted in the order dismissing the party's appeal, and the party has good reason for not doing so and would have presented an adequate claim or defense;

(b) The decision or order contains a clear mistake in the application of law;

(c) The decision or order contains a clerical mistake or clear mistake of the factual record; or

(d) There has been a change in circumstances since the initiation of the appeal that makes any relief provided by the decision impossible or inequitable.

3823.4 Within thirty (30) days of the filing of a motion for reconsideration, the Commission shall grant the motion, deny the motion or issue an order enlarging the time for later disposition of the motion.

3823.5 An order granting a motion for reconsideration filed pursuant to this section shall be decided by a quorum of the Commission.

3823.6 Failure of the Commission to act in the time prescribed by § 3823.4 shall constitute a denial of the motion for reconsideration.

3823.7 A motion for modification shall contain a short and plain statement of a specific error that is typographical, numerical, or technical in nature.

3823.8 An order granting or denying a motion for modification may be issued by a single Commissioner.

3824 WITHDRAWAL OF APPEALS

3824.1 An appellant may file a motion to withdraw an appeal pending before the Commission.

3824.2 The Commission shall review all motions to withdraw to ensure that the interests of all parties are protected.

3824.3 Where a party seeks to withdraw its appeal because a settlement has been reached, the party shall submit the executed settlement agreement in accordance with § 3829.

3824.4 An order granting a motion to withdraw an appeal may be granted by a single Commissioner.

3825 ATTORNEY'S FEES

3825.1 Attorney's fees may be awarded to a party for fees incurred in the administrative adjudication of a petition before the Rent Administrator, the Office of Administrative Hearings, or the Rental Housing Commission, pursuant to § 902 of the Act (D.C. Official Code § 42-3509.02).

3825.2 The Office of Administrative Hearings may award attorney's fees, in accordance with this section, that are incurred in a contested case before it and may include fees incurred for substantial work done, if any, to contest the matter while it was pending before the Rental Accommodations Division. In accordance with § 3802.3(b), the filing of a notice of appeal removes jurisdiction from the Office of Administrative Hearings to decide a motion for attorney's fees until all appeals of its final order are exhausted and the prevailing party ultimately determined.

3825.3 The Commission may award attorney's fees that are incurred in an appeal before it and shall review awards of attorney's fees by the Office of Administrative Hearings pursuant to a notice of appeal from such an award filed in accordance with § 3802.

3825.4 A motion for an award of attorney's fees shall be submitted to the Commission within thirty (30) days after the later of either the issuance of a final decision and order or an order dismissing an appeal, or a motion for reconsideration of the decision or order is granted or denied in accordance with § 3823. The Commission shall not decide a motion for attorney's fees until any further administrative proceedings, including a remand of the case, and all judicial review are exhausted and the prevailing party determined.

3825.5 If a party did not prevail before the Office of Administrative hearings but does so in an appeal to the Commission, and the matter is not remanded by the Commission,

the party may file a motion for attorney's fees incurred before the Office of Administrative Hearings with that office within the time provided by 1 DCMR § 2940 from the date on which the party prevails before the Commission.

3825.6 A presumption of entitlement to an award of attorney's fees is created by a prevailing tenant who is represented by an attorney.

3825.7 A prevailing housing provider represented by an attorney may be awarded attorney's fees where the Office of Administrative Hearings or the Commission, as applicable, finds that the claims raised by a tenant, or a specific part thereof, was frivolous, unreasonable, or without foundation, or the tenant continued to litigate the claim after it clearly became so, whether or not the litigation was brought in bad faith.

3825.8 The Office of Administrative Hearings or Commission may deny an award of attorney's fees to either a housing provider or a tenant, if it is determined that the equities indicate.

3825.9 Attorney's fees may be awarded only for the services of an attorney, including the work of a law clerk, paralegal, or law student supervised by the attorney, who:

(a) Is authorized to appear as an attorney under the rules, as applicable to the motion, of the Rental Accommodations Division, the Office of Administrative Hearings, or the Commission in § 3812.8 as a member in good standing of the bar, by *pro hac vice* admission, or as a supervised law student;

(b) Did not withdraw his or her appearance from the case prior to the issuance of a dispositive order by the Office of Administrative Hearings or the Commission, as applicable to the motion, unless the party was immediately represented by substitute counsel; and

(c) Is not a *pro se* party to a case who is incidentally an attorney.

3825.10 Attorney's fees may only be awarded for services performed after a party makes or is served with an initial filing in a contested case, and the filing or response to the filing is signed by an attorney of record. Fees may also be awarded for services within a reasonable period of time prior to a party's initial filing, as necessary to determine whether to represent the party, to investigate the basis for the claims, or to prepare the initial filing. For purposes of this section, an initial filing in a contested case shall be:

(a) A tenant petition;

(b) Exceptions and objections to, or other notice of the intent to contest, a housing provider's petition or an application for approval of a voluntary agreement; or

(c) A notice of appeal.

3825.11 A party moving for an award of attorney's fees has the burden of proving the amount of the award with substantial evidence of the hours of services provided and the rates charged for those services, in accordance with § 3825.12. Substantial evidence may include an affidavit executed by the party's attorney itemizing the attorney's time and rates for legal services, a client engagement letter, or other memorialization of the attorney-client relationship that states the fee agreement.

3825.12 An award of attorney's fees shall be calculated as follows, in accordance with the standards applied by courts in the District of Columbia under similar fee-shifting statutes:

(a) A party shall be presumptively entitled to the lodestar amount, which shall be the product of:

(1) The number of hours reasonably expended on the matter, which shall be calculated as:

(A) The actual hours of work attributable to the matter, as supported by affidavits or other competent evidence; minus

(B) Any hours of work that are excessive, redundant, or otherwise unnecessary; minus

(C) Any hours of work that are attributable to, or a proportional reduction based on, any issue(s) upon which the party did not prevail; multiplied by

(2) A reasonable hourly rate, in consideration of:

(A) The attorney's billing practices;

(B) The attorney's skill, experience, and reputation; and

(C) The prevailing market rates in the District of Columbia; and

(b) In extraordinary circumstances, the lodestar amount may be increased or reduced based on specific evidence that the lodestar amount is not fair or reasonable because it does not reflect one or more of the following factors:

(1) The time and labor required;

(2) The novelty, complexity, and difficulty of the legal issues or questions;

(3) The skill requisite to perform the legal service properly;

(4) The preclusion of other employment by the attorney, due to acceptance of the case;

(5) The customary fee;

(6) Whether the fee is fixed or contingent;

(7) The time limitations imposed by the client or the circumstances;

(8) The amount involved and the results obtained;

(9) The experience, reputation, and ability of the attorney;

(10) The undesirability of the case;

(11) The nature and length of the professional relationship with the client; or

(12) The award in similar cases.

3825.13 No award of attorney's fees shall be granted in an action for eviction authorized under § 501 of the Act (D.C. Official Code § 42-3505.01).

3825.14 An award of attorney's fees may accrue interest from the date of the award, and the interest shall be calculated in accordance with § 3826.

3825.15 A motion for an award of attorney's fees may be decided by a single Commissioner.

3826 INTEREST

3826.1 The Office of Administrative Hearings or the Commission may impose simple interest on a rent refund ordered pursuant to § 901(a) of the Act (D.C. Official Code § 42-3509.01(a)) and §§ 4217.1 and 4217.2 of this title, or on an award of attorney's fees pursuant to § 902 of the Act (D.C. Official Code § 42-3509.02) and § 3825 of this chapter.

3826.2 Interest shall accrue separately for each month for which a rent refund is ordered. The total interest imposed shall be the sum of the interest calculated for each rent overcharge in the rent refund order. If the total amount of a rent refund in any month results from multiple violations of the Act that arose on different dates, the

interest on the refund owed shall be separately calculated for each violation, from the date of the violation.

3826.3 The applicable interest rate imposed on a rent refund shall be the judgment interest rate used by the Superior Court of the District of Columbia pursuant to D.C. Official Code § 28-3302(c) on the date of the order to pay the refund.

3826.4 The accrual period for interest on a rent refund shall be calculated from the date the unlawful rent was charged, which includes the date a service or facility was reduced without a corresponding reduction in rent, to the date of the order to pay the rent refund.

3826.5 The interest accrued on a rent refund shall be the product of:

(a) The amount of the rent overcharge, or treble that amount in the event of bad faith (*i.e.*, the principal), in accordance with § 3826.2; multiplied by

(b) The interest factor for the overcharge, which shall be:

(1) The applicable interest rate, in accordance with § 3826.3, divided by twelve (12) to produce a monthly rate; multiplied by

(2) The accrual period for the overcharge, in accordance with § 3826.4, measured in months and any percentage of partial months (*i.e.*, the time).

3826.6 If the amount of a rent refund is modified by a subsequent order on reconsideration, appeal, or remand, the subsequent order shall include a recalculation of the total interest accrued through the date of the subsequent order. For the purposes of § 3826.3, "the date of the order to pay the refund" shall mean the date of the first order that imposed a rent refund, not the subsequent order.

3826.7 If the Commission determines in an appeal that a final order of the Office of Administrative Hearings miscalculates the interest to be imposed on a rent refund but does not find error in the amount of the rent refund itself, the Commission may correct the calculation and impose interest in accordance with § 3826.6.

3826.8 After a final order to pay a rent refund or attorney's fees is issued, interest shall accrue and be owed on any unpaid portion of the refund or fees, at the rate established by § 3826.4, until full payment is made. Interest imposed under this subsection shall be calculated on the total amount of a rent refund, not each separate rent overcharge or violation, and not including any interest calculated in the order. Payment of interest owed under this subsection may be enforced by filing an application for entry of the final order as a judgment in accordance with Superior Court Civil Rule 12-I(b)(1)(G) or by otherwise commencing a civil action in the

Superior Court of the District of Columbia for enforcement of the final order pursuant to § 218 of the Act (D.C. Official Code § 42-3502.18).

3826.9 Interest shall not be imposed under this section on any rent overcharges that are deposited in an escrow account or court registry if the deposit bears interest.

3827 FINES AND INFRACTIONS

3827.1 In accordance with the provisions of § 901 of the Act (D.C. Official Code § 42-3509.01), the Commission shall hear and decide appeals involving fines for infractions or violations of the Act. The Commission may impose fines not exceeding five thousand dollars ($5,000) for each violation.

3828 COMMISSION PROCEDURES GENERALLY

3828.1 When this chapter is silent on a procedural issue before the Commission, that issue may be decided by using as guidance, first, the Rules of the District of Columbia Court of Appeals or, second, the District of Columbia Superior Court Rules of Civil Procedure.

3828.2 Where the Commission determines, after notice and reasonable opportunity to respond, that a party, or a party's attorney or other representative as authorized by § 3812, has violated an obligation under this chapter or an order of the Commission, the Commission may impose monetary sanctions, including a fine, or an award of attorney's fees in an amount consistent with § 3825.12.

3828.3 A determination that a person has committed a violation under § 3828.2 may be made by the Commission pursuant to a motion of any party or pursuant to an order of the Commission to show cause that sanctions should not be imposed.

3828.4 The Commission, in its discretion, may continue a determination of the amount of attorney's fees to be imposed as a sanction pursuant to § 3828.2 until after the final disposition of the issues on appeal.

3829 SETTLEMENTS, STIPULATIONS, AND MEDIATION

3829.1 An appeal, any issue in an appeal, or any liability or remedy under the Act may be resolved or disposed of by settlement, stipulation, or other agreement. This may occur in cases on appeal before the Commission at any time before the issuance of a final decision and order.

3829.2 A settlement, stipulation, or other agreement may be reached through the written consent of any or all affected parties, including a mediated agreement reached through mediation proceedings offered by a designated member the Commission's staff.

3829.3 Mediation is a process of assisted, informal negotiation which uses a neutral third party, a mediator, to aid the parties in exploring the possibility of settlement. No party may be compelled to accept a settlement or other resolution of a dispute in mediation.

3829.4 At any time during case proceedings, the Commission may, on its own or by request of any party, refer a case for mediation to a designated member of its staff, who shall be an attorney, to act as a mediator for the parties to an appeal by the following procedure:

(a) The Commission shall serve a notice to all parties offering the opportunity for mediation, and shall provide the parties thirty (30) days to respond;

(b) Upon the receipt of a response from all parties, if more than one party agrees to mediation, the designated member of the Commission's staff who will serve as the mediator shall schedule a mediation session with the advice of all participating parties; and

(c) A party agreeing to mediation may request to reschedule a mediation session at least ten (10) days before it is scheduled for good cause shown.

3829.5 If the Commission has received the certified record of a case on appeal, it may, by motion of a party or on its own initiative, grant a continuance of all briefing, hearings, or other argument of the appeal, and may defer the issuance of a final decision and order, while mediation proceedings are pending.

3829.6 A member of the Commission's staff who serves as a mediator may speak privately with any party or any representative during the mediation process, and any communications made in the mediation process by the designated mediator shall not constitute *ex parte* communications under § 3818.

3829.7 No Commissioner shall act as a mediator between parties to an appeal before the Commission.

3829.8 Mediation proceedings conducted by the designated member of the Commission's staff shall be confidential, closed to the public, and not recorded in any manner, with or without the consent of the parties. No statements during a mediation proceeding or any documents prepared exclusively for a mediation proceeding shall become part of the record of an appeal or be admissible in any adjudication under the Act. The designated member of the Commission's staff who acts as a mediator shall not disclose any information learned from his or her participation and shall be screened from internal deliberations on the case.

3829.9 Parties agreeing to participate in mediation provided by the Commission's staff shall negotiate in good faith towards resolution of the appeal or an issue on appeal, and any representative appearing at mediation must have authority from the party

to resolve the case or issues within the scope of the mediation. Mediation proceedings may be terminated for failure of one or more parties to comply with this subsection.

3829.10 Notwithstanding § 3829.8, a mediator may report, without elaboration, to the Commission:

(a) Whether the parties reached an agreement; and, if not

(b) Whether he or she believes further mediation would be productive.

3829.11 A settlement, stipulation, or other agreement, including a mediated agreement, that contains terms for the approval of a rent adjustment for which administrative approval is required under the Rent Stabilization Program, as specified in 14 DCMR § 4204, shall be filed with the Commission by the appellant within five (5) days of its execution as an attachment to a motion for the Commission to dismiss the appeal, dismiss an issue on appeal, or accept any stipulation. Any adjustment to the rent charged for a rental unit pursuant to a settlement agreement shall be timely filed with the Rental Accommodations Division in accordance with 14 DCMR § 4205.

3829.12 An agreement required to be filed by § 3829.11 shall be made a part of the record of the case, notwithstanding any terms of the agreement requiring confidentiality or nondisclosure.

3829.13 The Commission shall review all settlements, stipulations, or other agreements filed pursuant to § 3829.11 to ensure that the interests of all parties are protected, in consideration of:

(a) The extent to which the settlement enjoys support among the affected Tenants;

(b) The potential for finally resolving the dispute;

(c) The fairness of the proposal to all affected persons;

(d) The potential saving of litigation costs to the parties; and

(e) The difficulty of arriving at prompt final evaluation of merits, given complexity of law, and delays inherent in administrative and judicial processes.

3829.14 If the Commission determines that a settlement, stipulation, or other agreement meets the requirements of § 3829.13, the Commission may issue an order dismissing the appeal or issue on appeal.

3829.15 Any order provided under this section may be issued by a single Commissioner.

3830 INVOLUNTARY DISMISSAL

3830.1 The Commission may dismiss an appeal for failure to comply with these rules or for any other lawful reason.

3899 DEFINITIONS

3899.1 The provisions of this section shall be applicable to Chapters 38 through 44 of this title.

3899.2 The following words and phrases shall have the meanings ascribed:

Act – the Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code §§ 42-3501.01 *et seq.*), as amended. The terms "arising under the Act," "provisions of the Act," "pursuant to the Act," and "violation of the Act" include the rules in Chapters 38 through 44 of this title or, where a specific section of the Act is referenced, any rules in those Chapters that are relevant to the referenced section of the Act.

Adjustment of general applicability – a rent adjustment that is authorized on an annual basis for all rental units covered by the Rent Stabilization Program, which is calculated based on the consumer price index, as provided by § 206(b) of the Act (D.C. Official Code § 42-3502.06(b)) and § 4206 of this title.

Administrative Law Judge – an Administrative Law Judge of the Office of Administrative Hearings who presides over a contested case or other administrative adjudicative proceeding arising under the Act.

Area median income – as defined in D.C. Official Code § 42-2801(1):

(i) For a household of 4 persons, the area median income for a household of 4 persons in the Washington Metropolitan Statistical Area as set forth in the periodic calculation provided by the United States Department of Housing and Urban Development;

(ii) For a household of 3 persons, 90% of the area median income for a household of 4 persons;

(iii) For a household of 2 persons, 80% of the area median income for a household of 4 persons;

(iv) For a household of one person, 70% of the area median income for a household of 4 persons;

(v) For a household of more than 4 persons, the area median income for a household of 4 persons, increased by 10% of the area median income for a family of 4 persons for each household member exceeding 4 persons (e.g., the area median income for a family of 5 shall be 110% of the area median income for a family of 4; the area median income for a household of 6 shall be 120% of the area median income for a family of 4).

Base rent – the rent legally charged or chargeable on April 30, 1985, for a rental unit, which was the sum of the rent charged on September 1, 1983, and all rent increases authorized for that rent 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.

Business days – all days other than Saturdays, Sundays, legal holidays codified at D.C. Official Code § 1-612.02, furlough days, and other closed days as designated by the District of Columbia Government.

Capital improvement – an improvement or renovation of a rental unit or housing accommodation, other than ordinary repair, replacement, or maintenance, if the improvement or renovation is deemed depreciable under the Internal Revenue Code (26 USC).

Clerk – the Clerk of Court employed by the Commission.

Commission – the Rental Housing Commission, the three (3)-member body established by § 201 of the Act (D.C. Official Code § 42-3502.01) to decide appeals and promulgate regulations under the Act and to certify and publish the annual adjustment of general applicability.

Commercially reasonable – within a reasonably foreseeable range of costs that would be incurred in an arm's length transaction in current, local market conditions for similar products or services.

Conciliation Service – the service established within the Rental Accommodations Division by § 503 of the Act (D.C. Official Code § 42-3505.03) that provides a voluntary, non-adversarial forum for the resolution of disputes arising between housing providers and tenants.

Condominium – real estate, portions of which, in accordance with the Condominium Act of 1976, effective March 29, 1977 (D.C. Law 1-89; D.C. Official Code §§ 42-1901.01 *et seq.*), are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of the portions designated for separate ownership. Real estate shall not be deemed a condominium unless the undivided interests in the common elements are vested in the unit owners.

Contested case – a proceeding arising under the Act in which the legal rights, duties, or privileges of specific parties are required by the provisions of the Act or any other law, or by constitutional right, to be determined after a hearing.

Cooperative housing association – 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 other evidence of membership, are entitled to occupy a dwelling unit under the terms of a proprietary lease or occupancy agreement.

Cooperative housing use – the ownership of residential real property, or any portion thereof, by a cooperative housing association, and the occupancy of such property, or portion thereof, by a shareholder or member of the association, or the offering of occupancy to shareholders or members.

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

Elderly tenant – a tenant who is sixty-two (62) years of age or older.

Home and community-based services waiver provider – means an entity that provides residential habilitation or supported living services under the Medicaid Home and Community-Based Services Waiver for Persons with Intellectual and Developmental Disabilities program authorized by Section 1915(c) of the Social Security Act, approved August 13, 1981 (95 Stat. 809; 42 USC § 1396n).

Housing accommodation – any structure or building in the District containing one (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 sixty percent (60%) of the rooms devoted to living quarters for tenants or guests were used for transient occupancy as of May 20, 1980.

Housing provider – a landlord, owner, lessor, sub-lessor, assignee, or any other person receiving or entitled to receive rents or benefits for the use or occupancy of any rental unit within a housing accommodation within the District, and includes any property manager or other agent of a housing provider.

Housing Provider Ombudsman – the office within the Department of Housing and Community Development, Housing Regulation Administration that helps small housing providers better understand the District of Columbia's housing laws and provides assistance to them.

Housing Regulations – the Housing Regulations of the District of Columbia, effective August 11, 1955 (Commissioners' Order 55-1503; 14 DCMR Chapters 1-13), as amended, including all applicable provisions of the Property Maintenance Code in accordance with 12-G DCMR § 102.4.1.

Initial leasing period – that period for which the first tenant leases a rental unit immediately after the date it is first offered for rent as a rental unit that is not otherwise exempt from the Act.

Late fee – any amount of money, money's worth, benefit, bonus, or gratuity demanded, received, or charged by a housing provider as a consequence of any lack of payment or receipt of rent by the date on which it is due.

Mandatory fee – any amount of money, money's worth, benefit, bonus, or gratuity demanded, received, or charged by a housing provider, unless on an opt-in basis to tenants, for any service or facility, including move-in, move-out, amenity, utility, appliance, equipment, and other fees however described, but not including late fees.

Multi-building housing complex – the aggregate of rental units located in two (2) or more physically contiguous buildings that share common ownership and management and are operated and treated for management and accounting purposes as a single business entity.

Office of Administrative Hearings – the agency established by the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code §§ 2-1831.01 *et seq.*), responsible for the administrative adjudication of contested cases and other administrative adjudicative proceedings arising under the Act, and includes its Chief Administrative Law Judge and Administrative Law Judges.

Office of the Tenant Advocate – the agency established by the Office of the Chief Tenant Advocate Establishment Act, effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code §§ 42-3531.01 *et seq.*), to provide education, outreach, technical and legal advice, and other advocacy and assistance to tenants in the District, and includes the Chief Tenant Advocate.

Person – an individual, corporation, partnership, association, joint venture, business entity, or an organized group of individuals, and includes any agent, successor, or assignee of a person.

Property Maintenance Code – The 2012 Property Maintenance Code published by the International Code Council, and any subsequent editions thereof, as adopted by the District of Columbia with additions, insertions, deletions and changes as set forth in the 2013 District of Columbia Property Maintenance Code Supplement, 12-G DCMR, or any successor thereto.

Qualifying income – household income, as defined by D.C. Official Code § 47-1806.06(b), that is no greater than sixty percent (60%) of the area median income.

Related facility – 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.

Related service – any service provided by a housing provider that is required by law, including the Housing Regulations, 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.

Rent – 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.

Rent adjustment –any act by a housing provider that has the effect of increasing or decreasing rent, including acts to implement a rent surcharge.

Rent Administrator – the head of the Rental Accommodations Division who is appointed by the Mayor and administers the Act, including the Rent Stabilization Program, in accordance with § 204 of the Act (D.C. Official Code § 42-3502.05) and Chapter 39 of this title.

Rent ceiling – the amount that, prior to the Rent Control Reform Amendment Act of 2006, effective August 5, 2006 (D.C. Law 16-145; 53 DCR 4889 (June 23, 2006)), was defined in or computed under § 206(a) of the Act (D.C. Official Code § 42-3502.06(a)) and Chapter 42 of this title to be the maximum amount of rent permitted for a rental unit covered by the Rent Stabilization Program.

Rent charged – the entire amount of money, money's worth, benefit, bonus, or gratuity a tenant must actually pay to a housing provider as a condition of

occupancy or use of a rental unit, its related services, and its related facilities, pursuant to the Rent Stabilization Program.

Rent surcharge –a charge added to the rent charged for a rental unit pursuant to a capital improvement petition, hardship petition, or a substantial rehabilitation, and not included as part of the rent charged.

Rent refund – monetary compensation to a tenant for rent previously unlawfully demanded or received by a housing provider for a rental unit.

Rent rollback – a reduction in the rent to be paid in the future for a rental unit to correct a violation of the Act.

Rent Stabilization Program – the provisions of §§ 205(f) through 219, except § 217, and § 224, of the Act (D.C. Official Code §§ 42-3502.05(f) - 42-3502.19, except 42-3502.17, and 42-3502.24) and Chapter 42 of this title, which regulate rents and related services and facilities in rental units that it covers.

Rental Accommodations Division – the division of the Department of Housing and Community Development, Housing Regulation Administration, established by § 42-3502.03 of the Act (D.C. Official Code § 42-3502.03) to assist the Rent Administrator in carrying out his or her functions and duties under the Act.

Rental Housing Act of 1980 – the Rental Housing Act of 1980, effective March 4, 1981 (D.C. Law 3-131; 28 DCR 326 (January 23, 1981)), as amended, prior to its repeal on July 17, 1985.

Rental unit – any part of a housing accommodation that is rented or offered for rent for residential occupancy, and includes an apartment, efficiency apartment, room, single-family house and the land appurtenant thereto, suite of rooms, or duplex.

Social Security COLA – the cost-of-living adjustment to the benefits for social security recipients announced by the Social Security Administration pursuant to § 215(i) of the Social Security Act, approved August 28, 1950 (64 Stat. 506; 42 USC § 415(i)).

Substantial evidence – relevant evidence that a reasonable mind might accept as adequate to support a conclusion.

Substantial rehabilitation – 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 fifty percent (50%) of the assessed value of the housing accommodation before the rehabilitation.

Substantial violation – 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.

Substantially identical rental unit – a rental unit that:

(a) Is covered by the Rent Stabilization Program;

(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 subject rental unit; and

(c) Is located in the same building or in a similar building within the same housing accommodation as the subject rental unit.

Tenant – a person entitled to the possession, occupancy, or the benefits of any rental unit owned by another person, and includes a tenant, subtenant, lessee, sub-lessee, and does not include a proprietary lease holder, shareholder, or other member of a cooperative housing association.

Tenant association – a group of tenants organized by a signed, written agreement to act on behalf of its members, or other tenants agreeing to be represented, in any specifically identified matter arising under the Act.

Tenant petition – a petition filed with the Rental Accommodations Division by a tenant or tenant association pursuant to § 4214 to contest and request appropriate relief for a violation of the Act or Chapters 41 through 44 of this title.

Tenant with a disability – a tenant who has a physical or mental impairment that substantially limits one or more major life activities of such individual, in accordance with § 3(1)(A) of the Americans with Disabilities Act of 1990, approved July 26, 1990 (104 Stat. 329; 42 USC § 12102(1)(A)), as amended by the ADA Amendments Act of 2008 (Pub. L. 110-325; 122 Stat. 3553), and the implementing regulations promulgated by the Equal Employment Opportunity Commission, 29 CFR § 1630.2(g)(1)(i).

Transient occupancy – the regular furnishing of any room or rooms, lodgings, or accommodations to transients for consideration that is subject to retail sale tax pursuant to D.C. Official Code § 47-2001(n)(1)(C).

Vacancy adjustment – a rent adjustment that is authorized at the time a rental unit becomes vacant, as provided by § 213 of the Act (D.C. Official Code § 42-3502.13) and § 4207 of this title.

Voluntary agreement – a written agreement to be executed by seventy percent (70%) or more of the tenants of a housing accommodation and the housing provider that, with approval, establishes the rents, levels of services or facilities, or provides for capital improvements and repairs and maintenance, as provided by § 215 of the Act (D.C. Official Code § 42-3502.15) and § 4213 of this title.

CHAPTER 39: RENTAL ACCOMMODATIONS DIVISION

3900 THE RENT ADMINISTRATOR

3900.1 The Rent Administrator, in addition to other duties, shall:

(a) Carry out the administration of the Rent Stabilization Program, including the receipt and maintenance of records of registrations, exemptions, rent levels, and petitions;

(b) Receive and review all applications and petitions arising under Titles II, IV, V, VI, and IX of the Act;

(c) Publish and update legally sufficient forms required by the provisions of the Act for use by housing providers and tenants;

(d) Make conciliation services available to housing providers and tenants in accordance with § 3913; and

(e) Issue advisory opinions regarding the applicability of the Act and Chapters 39-44 of this title upon request in accordance with § 3915.

3900.2 After making any initial determinations or issuing any necessary or appropriate preliminary orders, the Rent Administrator shall transmit all matters that require an evidentiary hearing pursuant to the Act or Chapters 41-44 of this title to the Office of Administrative Hearings, including:

(a) Housing providers' petitions for hardship surcharges, capital improvement surcharges, related service or facility adjustments, and substantial rehabilitation surcharges pursuant to § 4208 and the applicable section for the type of adjustment that is requested, pursuant to §§ 4209-4212;

(b) Applications for approval of voluntary agreements to which exceptions and objections have been filed pursuant to § **Error! Reference source not found.**;

(c) Tenant petitions filed pursuant to § 4214; and

(d) Show cause orders issued pursuant to § 3926.

3900.3 The Rent Administrator shall issue final orders on applications and petitions that do not require an evidentiary hearing pursuant to the Act or Chapters 41-44 of this title, including:

(a) Petitions that do not state a claim for which relief can be granted under the Act, in accordance with § 3903.2;

(b) Duplicative petitions filed within six (6) months of a prior petition, in accordance with § 216(f) of the Act (D.C. Official Code § 42-3502.16(f)) and § 3903.3 of this chapter;

(c) Applications by non-profit charitable housing providers for exclusion from the Act pursuant to § 4105.3;

(d) Housing provider petitions that have not been properly filed, in accordance with § 4208.6;

(e) Hardship petitions for which the housing provider has failed to comply with an order to supplement the documentation or to provide notice to the tenants, in accordance with § 4209.32;

(f) Hardship petitions for which a proposed order has been issued and no party has filed exceptions or objections, in accordance with § 4209.29-.36;

(g) Substantial rehabilitation petitions for which all affected rental units are vacant, in accordance with § 4212.22-.22;

(h) Applications for approval of voluntary agreements that either comply with § 215(c) of the Act (D.C. Official Code § 42-3502.15(c)) and § 4213.18 of this title or to which no exceptions and objections have been filed pursuant to § **Error! Reference source not found.**;

(i) Applications to register tenants' protected status from rent surcharges and rent adjustments of general applicability, in accordance with § 4215; and

(j) Applications to serve notices to vacate for unsafe alterations or renovations, pursuant to § 501(f) of the Act (D.C. Official Code § 42-3505.01(f)).

3900.4 The Rent Administrator shall enforce the Act and Chapters 41-44 of this title by:

(a) Issuing show cause orders and compliance notices pursuant to §§ 3926 and 3927;

(b) Reviewing and disapproving of defective notices to vacate pursuant to § 4300.5 of this title;

(c) Filing complaints in the Superior Court of the District of Columbia pursuant to § 218 of the Act (D.C. Official Code § 42-3502.18) and § 4217.5 of this title; and

(d) Referring appropriate matters to the Office of the Attorney General or the Department of Consumer and Regulatory Affairs.

3900.5 The Rent Administrator shall establish internal operating procedures for the handling of Rental Accommodations Division business.

3900.6 The Rent Administrator may issue written delegations of authority pursuant to § 204(d) of the Act (D.C. Official Code § 42-3502.04(d)) to Rental Accommodations Division rental property specialists to issue preliminary orders or make other determinations on petitions or other applications in accordance with § 3900.3.

3900.7 The Rental Accommodations Division shall be open for public business at the Housing Resource Center of the Department of Housing and Community Development daily from 8:30 a.m. to 3:30 p.m., except Saturdays, Sundays, legal holidays, furlough days, and other closed days as designated by the Department of Housing and Community Development or the District of Columbia Government.

3900.8 The Rent Administrator shall provide for the operation of a telephone service during the hours provided by § 3900.7 to provide assistance to tenants in accordance with the provisions of § 705 of the Act (D.C. Official Code § 42-3507.05).

3900.9 The Rental Accommodations Division shall maintain an internet-accessible, searchable database of filings made pursuant to the Rent Stabilization Program, following completion of the publicly accessible rent control housing database required by § 203c of the Act (D.C. Official Code § 42-3502.03c).

3901 FILING PETITIONS AND OTHER DOCUMENTS

3901.1 All petitions and other documents to be filed with the Rent Administrator shall be received in the Department of Housing and Community Development, Housing Regulation Administration, Rental Accommodations Division, Housing Resource Center at 1800 Martin Luther King Jr. Avenue, S.E., Washington, D.C. 20020, unless otherwise directed or as provided by § 3901.11, during the hours provided by § 3900.7.

3901.2 No fee shall be charged for filing any petition or other document with the Rental Accommodations Division.

3901.3 All petitions and applications arising under the Act shall be filed on forms published by the Rent Administrator and accompanied by any supporting documents as required.

3901.4 All documents filed shall be promptly date-stamped and entered into the appropriate Rental Accommodations Division daily log.

3901.5 All petitions filed shall be promptly date-stamped and entered into the appropriate Rental Accommodations Division petition log.

3901.6 All Rental Accommodations Division daily logs and petition logs shall be available for public inspection.

3901.7 Unless otherwise provided by Chapters 39-44, each petition and other document filed with the Rental Accommodations Division shall consist of an original and five (5) identical copies of each document submitted; one of the date-stamped copies shall be returned to the filing party.

3901.8 All petitions and other documents filed shall be deemed filed when received and date-stamped by the Rental Accommodations Division during business hours provided in § 3900.4, unless, as provided by § 4208.6, the Rent Administrator determines a petition will be deemed filed at a later date.

3901.9 The Rent Administrator may refuse to accept for filing any pleading or other document that does not comply with the requirements of the Act or Chapters 39 through 44 of this title, including by reason that:

(a) It is not filed during business hours and with sufficient copies;

(b) It is not on the prescribed form if required by chapters 39-44 of this title;

(c) It is not prepared in accordance with the instructions of the Rent Administrator on a required form or is plainly defective on its face;

(d) It is not accompanied by documents where required; or

(e) It is not signed by the party, or an authorized representative of the party, filing the petition.

3901.10 The acceptance of a document for filing shall not constitute an approval of the document's legal sufficiency or a waiver of any failure to comply with the requirements of the Act or any regulations.

3901.11 The Rental Accommodations Division shall, following completion of the publicly accessible rent control housing database required by § 203c of the Act (D.C. Official Code § 42-3502.03c), provide an internet-accessible portal for the submission of any petition, application, or other document by housing providers. The Rental Accommodations Division may additionally provide for the filing of any petition, application, or other document through the portal by tenants. For the purposes of §§ 3901.1 and 3901.3, any time Chapters 38-44 of this title require information be filed on a form published by the Rent Administrator, submission through the portal shall be deemed to comply with the requirements that the document be received at the Housing Resource Center and that the published form be used. Any submission made through the portal outside the business hours provided by § 3900.7 shall be deemed received by the Rental Accommodations Division at the start of the next business day.

3902 PROCEDURES UPON FILING PETITION

3902.1 Upon receipt of a petition or initiation of another proceeding, the Rent Administrator shall assign a case number to it, using the following prefixes:

	DOCUMENT	PREFIX
(a)	Tenant Petitions	TP

(b)	Hardship Petitions	HP
(c)	Capital Improvement Petitions	CI
(d)	Substantial Rehabilitation Petitions	SR
(e)	Petitions for Changes in Related Services and Facilities	SF
(f)	Voluntary Agreements	VA
(g)	Show Cause Orders	SC
(h)	Non-compliance Notices	NCN
(i)	Notices to Vacate	NV
(j)	Charitable Exclusions	CE
(k)	Elderly or Disability Status	ED

3902.2 The Rent Administrator shall enter the date of receipt of each petition in a docket, which shall list the petition number and the address of the affected housing accommodation or rental unit.

3902.3 In the case of a petition filed by a housing provider, the housing provider shall provide copies of the petition and postage-paid envelopes for the notification of tenants in accordance with the rules of the Office of Administrative Hearings, 1 DCMR § 2923, as well as any additional copies or envelopes that the Rent Administrator may request in the case of a hardship petition or voluntary agreement.

3903 RIGHT TO HEARING AND DISPOSITION WITHOUT HEARING

3903.1 If a petition or other application requires an evidentiary hearing pursuant to the Act or Chapters 41-44 of this title, including those listed in § 3900.2, the Rent Administrator, after making any initial determinations or issuing any necessary or appropriate preliminary orders, shall transmit the petition or application, along with the official record in accordance with § 3919, to the Office of Administrative Hearings. A hearing before the Office of Administrative Hearings shall be conducted in accordance with the District of Columbia Administrative Procedures Act (D.C. Official Code § 2-509), the Office of Administrative Hearings Establishment Act of 2001 (D.C. Official Code §§ 2-1831.01 *et seq.*), and the rules of the Office of Administrative Hearings (1 DCMR §§ 2800 *et seq.* and § 2920 *et seq.*).

3903.2 The Rent Administrator on his or her motion may dismiss any petition without a hearing which does not state a claim for which relief can be granted under the Act.

3903.3 The Rent Administrator shall dismiss a petition for adjustment of rent without a hearing if a ruling on the same issue has been made by the Rent Administrator, the Office of Administrative Hearings, or the Commission for the same housing accommodation or rental unit within six (6) months prior to the filing of the petition, unless that previous ruling dismissed a former petition without prejudice to refiling.

3904 PARTIES

3904.1 Proceedings on a petition or application pending before the Rent Administrator shall individually identify each petitioner and each respondent named by the petitioner or each person electing to contest the petition or application, as applicable.

3904.2 If a petition or application is filed by or contested by a tenant association that meets the requirements of § 216a of the Act (D.C. Official Code § 42-3502.16a), the association shall be a party and be identified in place of its members or the tenants represented by the association.

3904.3 The Rent Administrator may require a tenant association filing or contesting a petition to submit written authorization of the members or other tenants represented by the association to represent them in proceedings on the petition.

3904.4 Representation by a tenant association shall be conducted in accordance with § 3918.

3905 CAPTIONS

3905.1 In order to achieve uniformity of pleadings before the Rent Administrator in all proceedings arising under the Act, all cases arising from complaints and petitions shall be properly captioned as provided in this section.

3905.2 Captions shall contain the name of the owner of the housing accommodation as listed on the registration statement and any other petitioner or respondent named by the filing party.

3905.3 Captions shall contain the name of each tenant or tenant association that is a party to the proceeding, in accordance with § 3904.

3906 SUBSTITUTION OR ADDITION OF PARTIES

3906.1 In the event of the death, dissolution, reorganization, or change of ownership or interest of a party, the Rent Administrator may, upon his or her own motion when such an event is suggested by any documents filed, or upon the motion of a party,

substitute or add a person, including a trust, estate, or representative, as a party to the proceeding.

3906.2 If it appears to the Rent Administrator that the identity of the parties has been incorrectly determined, the Rent Administrator may substitute or add the correct parties on his or her own motion.

3906.3 No substitution or addition of parties may occur unless all current and proposed parties are served with the motion in accordance with § 3911 and given an opportunity to file written arguments in support of or in opposition to a motion for substitution of parties. The Rent Administrator may require a current or proposed party to file documentation establishing the relationship or interest of the party to be substituted.

3907 INTERVENORS

3907.1 There shall be no intervenors as a matter of right in Rental Accommodations Division proceedings, but intervenors may be permitted to participate in the proceeding prior to a hearing if the proceedings will directly affect their rights or duties and is otherwise appropriate.

3907.2 A request to intervene shall be by motion stating the reasons why intervention should be permitted.

3907.3 While a proceeding is pending before the Rent Administrator, intervenors shall be considered full parties and shall have the same rights and duties as a party to a petition, with the following exceptions.

(a) Intervenors shall not have an independent right to a hearing; and

(b) Intervenors may participate only with respect to issues affecting them that do not require a hearing, as determined by the Rent Administrator.

3908 EXPANDING THE SCOPE OF A PROCEEDING

3908.1 If, prior to the transfer by the Rent Administrator of a tenant petition to the Office of Administrative Hearings, the Rent Administrator determines that the issues raised in the petition may affect other tenants or all tenants in the housing accommodation, the Rent Administrator may provide written notice and advise the Office of Administrative Hearings of the possible grounds for the Office of Administrative Hearings to expand the scope of the proceeding to include all affected tenants in accordance with 1 DCMR § 2929.

3909 CONSOLIDATION OF PETITIONS

3909.1 The Rent Administrator may consolidate two (2) or more petitions where they contain identical or similar issues or where they involve the same rental unit or housing accommodation.

3909.2 The Rent Administrator may consolidate petitions on the motion of a party to a petition, if consolidation would expedite the processing of the petition and would not adversely affect the interests of the parties.

3910 [RESERVED]

3911 SERVICE OF NOTICE

3911.1 All petitions and other documents required to be served upon any person under this chapter shall be served upon that person or the representative designated by a party, as provided in § 3918, in the manner provided in this section. All petitions and applications under Chapter 42 shall be served on affected parties by the Rent Administrator or Office of Administrative Hearings after they are filed, unless otherwise specified by that chapter.

3911.2 When a party has a representative of record after a proceeding has been initiated, as provided in § 3918, service shall be made upon the representative.

3911.3 Notwithstanding § 904(a) of the Act (D.C. Official Code § 42-3509.04(a)), service upon any person or representative shall be completed only:

(a) By handing the document to the person, by leaving it at the person's place of business with a responsible person in charge, or by leaving it at the person's usual place of residence with a person of suitable age and discretion;

(b) By first class mail of the United States Postal Service, properly stamped and addressed; or

(c) By any other means that is in conformity with an order of the Rent Administrator in the course of the proceeding for which service is made.

3911.4 Actual receipt of service shall bar any claim of defective service, except for a claim with respect to the timeliness of service.

3911.5 Service by mail of the U.S. Postal Service shall be complete upon mailing.

3911.6 All petitions or other documents required to be served on the other party or parties shall be served prior to or at the same time as they are filed with the Rental Accommodations Division.

3911.7 Every pleading, motion, and other document filed with the Rental Accommodations Division shall include a signed statement that it was served as required, which shall be captioned as a "certificate of service" and shall show the date, name of the person(s) served, address at which service was made, and the manner of service. If service is made by a process server, proof of service shall be in an affidavit showing the date, the person served, address at which service was made, the manner of service, and the name and address of the process server.

3912 CALCULATION OF DEADLINES

3912.1 Where this chapter or any order of the Rent Administrator specifies a time period, any reference to "days" shall mean all calendar days, unless specifically designated as "business days."

3912.2 "Business days," where expressly used in this chapter or by order of the Rent Administrator, shall be all days other than Saturdays, Sundays, legal holidays codified at D.C. Official Code § 1-612.02, furlough days, and other closed days as designated by the District of Columbia Government.

3912.3 In calculating any period of time prescribed or allowed by this chapter or by order of the Rent Administrator, the day of the act, event, or default from which the time period begins to run shall not be included.

3912.4 In calculating any time period specified by this chapter or by order of the Rent Administrator, the last day of the period shall be included, unless it is not a business day, in which case the period shall end on the next business day.

3912.5 In accordance with § 3811.5, a party's obligation to serve any petition or other document on another person, if done by U.S. mail, shall be deemed complete on the date of mailing.

3912.6 If a party is permitted or required to act within a specified time period after an event, such as the issuance of any order or the service of a motion by another party, if the party has been served with the petition or other document by U.S. mail, five (5) days shall be added to the time period for the party to act.

3912.7 In accordance with § 3901.8, a party's obligation to file any petition or other document with the Rent Administrator shall only be deemed complete upon actual receipt by the Rental Accommodations Division during its business hours, as provided by § 3901.7, regardless of how the filing is made.

3912.8 The Rent Administrator may enlarge any time period specified in the course of a proceeding, either on motion by a party or on its own initiative in accordance with § 3925.

3913 CONCILIATION OF DISPUTES AND THE CONCILIATION SERVICE

3913.1 Either a housing provider or a tenant may initiate a request for conciliation of a dispute arising under the Act by the Rental Accommodations Division Conciliation Service established by § 503 of the Act (D.C. Official Code § 42-3505.03). Nothing herein shall prevent the Rent Administrator from initiating a conciliation proceeding with the approval of the parties.

3913.2 A request for conciliation of a dispute shall be filed on a form published by the Rent Administrator and shall include a completed request packet in accordance with the requirements of the published form.

3913.3 The Conciliation Service shall do the following:

(a) Utilize knowledge of the Act, this subtitle, and, if applicable, an Apartment Improvement Program building improvement plan, and other specific information about the circumstances of the dispute to assist the parties in arriving at a mutually acceptable explanation of the dispute and to assist the parties in developing a mutually acceptable settlement or resolution of the dispute;

(b) Advise both the housing provider and the tenant of their rights and obligations under the Act, this subtitle, and other applicable D.C. laws; and

(c) Advise both the housing provider and the tenant of circumstances surrounding the dispute which constitute violations of the Act, this subtitle, and other D.C. laws.

3913.4 Neither party to a dispute brought before the Conciliation Service shall be compelled to attend a session or participate in any proceeding of the Conciliation Service.

3913.5 The results of an attempt to conciliate a dispute shall not be binding upon either party, except where an agreement is developed voluntarily as a result of the conciliation.

3913.6 Agreements reached during conciliation shall not prevent the Rent Administrator from enforcing the provisions of the Act or this subtitle.

3913.7 The proceedings of the Conciliation Service shall be informal, voluntary, and non-adversarial. No evidentiary record for a pending petition shall be established by any filings, statements, or proceedings before the Conciliation Service.

3913.8 Admissions of responsibility by either party or other stipulations required as an essential condition for making an agreement shall not be admissible in any adjudicatory proceedings under the Act, this subtitle, or any other administrative or judicial proceedings under provisions of District law.

3913.9 Each tenant petition may be reviewed by the Conciliation Service to determine if it involves issues which could be resolved through conciliation.

3913.10 If issues which may be resolved through conciliation are presented in a tenant petition, the Conciliation Service shall discuss with the tenant the conciliation of the matters raised in the tenant petition. If the tenant agrees, the Conciliation Service shall contact the housing provider.

3913.11 If a tenant and housing provider agree to conciliation, the Rent Administrator shall delay the transmittal of the case of the Office of Administrative Hearings or, if the case has already been transmitted, notify the presiding Administrative Law Judge that a stay or continuance of proceedings may be advisable.

3913.12 If conciliation fails, upon mutual consent of the parties, the housing provider and the tenant may submit any dispute for arbitration, in accordance with § 3914.

3914 ARBITRATION

3914.1 By mutual agreement, both the housing provider and the tenant(s) who are parties to a dispute under this Act, may file with the Rent Administrator, on a form published by the Rent Administrator, a request for arbitration of any dispute not satisfactorily conciliated under § 503 of the Act (D.C. Official Code § 42-3505.03) and § 3913 of this chapter.

3914.2 Parties may waive the conciliation process and mutually agree to have the dispute arbitrated pursuant to this section and § 504 of the Act (D.C. Official Code § 42-3505.04).

3914.3 An arbitration recommendation, issued pursuant to the Arbitration Panel's recommendation, shall not be binding on the parties unless both parties demonstrate their acceptance by signing it. The Rent Administrator shall approve agreements entered into by the parties under the panel's recommendation.

3914.4 The Rent Administrator shall designate three (3) members of the Rental Accommodations Division staff, other than those who heard the dispute under § 503 of the Act (D.C. Official Code § 42-3505.03) to serve as members of the Arbitration Panel.

3914.5 The Arbitration Panel shall schedule and conduct an arbitration hearing at a time convenient to the parties.

3914.6 The Arbitration Panel shall issue a written recommendation to resolve the dispute within ten (10) days of the arbitration request, which shall be served on all parties to the arbitration.

3914.7 Any agreement accepted and entered into by the parties, pursuant to the Arbitration Panel's recommendation shall be approved by the Rent Administrator and shall be binding on the parties. The agreement shall not be appealable to the Commission.

3914.8 Any arbitration agreement accepted and entered into by the parties, pursuant to the Arbitration Panel's recommendation, shall be enforceable by a court of competent jurisdiction, upon application by the Rent Administrator or the parties.

3915 ADVISORY OPINIONS

3915.1 The Rent Administrator may issue, at the request of any person, an advisory opinion on issues of first impression relating to specific proposed actions under the Act or Chapters 39 through 44 of this title.

3915.2 Advisory opinions shall not be issued to a party to any pending case arising under the Act with respect to any contested issue in the party's case.

3915.3 Each inquiry shall meet the following requirements:

(a) Be submitted in writing;

(b) Specifically request an advisory opinion;

(c) Contain a signed statement of proposed action, of all relevant facts and of the author's interpretation of the law or regulations; and

(d) Be accompanied by any relevant documents.

3915.4 The Rent Administrator shall maintain a file of all advisory opinions that is available for public inspection.

3915.5 An advisory opinion issued by the Rent Administrator shall not be binding on or provide safe harbor to the requesting person or be binding on any District agency.

3916 EX PARTE COMMUNICATIONS

3916.1 An *ex parte* communication is any oral or written communication that is:

(a) To or by the Rent Administrator or staff of the Rental Accommodations Division;

(b) Regarding the merits or factual substance of a particular case; and

(c) Not made:

(1) In a filing that is also served on all required parties; or

(2) With reasonable prior notice and opportunity, under the circumstances, for all parties to be present for, to be a party to, or to be simultaneously made aware of the contents of the communication.

3916.2 *Ex parte* communications shall be prohibited unless:

(a) The communication is specifically authorized by law;

(b) The communication is regarding administrative or procedural matters, and any reference to the merits is merely incidental; or

(c) The communication is made in the course of another proceeding before the Rent Administrator to which the communication primarily relates, and which is on the public record.

3916.3 *Ex parte* communications regarding a particular case shall be prohibited any time after the petition initiating the case has been filed with the Rent Administrator and until the time that all possible appeals of the case are completed.

3916.4 Any *ex parte* communication made in violation of this section that comes to the attention of the Rent Administrator shall be made part of the record, and the Rent Administrator shall provide an opportunity for rebuttal by other parties by serving each party with a copy of any such communication or a memorandum describing the communication, within five (5) days of the communication.

3916.5 If the Rent Administrator determines that a communication was knowingly made (or caused to be made) by a party acting in violation of this section, the Rent Administrator may, to the extent consistent with the interest of justice and applicable law, require the party to show cause why his or her claim or interest in the proceeding should not be dismissed, denied, or otherwise adversely affected.

3917 BURDEN OF PROOF

3917.1 The proponent of a rule or order shall have the burden of establishing each finding of fact essential to the rule or order by a preponderance of evidence, except claims or defenses for which the burden is shifted as provided by the Act, Chapters 41-44 of this title, or 1 DCMR Chapter 28 and 1 DCMR §§ 2920-2941.

3917.2 In show cause hearings, the burden of proof shall rest on the Rent Administrator.

3918 APPEARANCES AND REPRESENTATION

3918.1 In any proceeding before the Rent Administrator, a party may be represented as follows:

(a) Any person may be represented by an attorney or other person who may provide legal services in accordance with § 3918.8;

(b) An individual or beneficiary of a trust may appear on his or her own behalf;

(c) A trustee, receiver, executor, or administrator may appear on behalf of a trust or estate;

(d) A guardian, next friend of a minor, or other person authorized by statute to do so may represent another person;

(e) An individual may appear on behalf of a corporation, limited liability company, or other business entity if the individual is an executive, director, officer, manager, proprietor, general partner, or other authorized decision-maker for entity; or

(f) A tenant or a group of tenants may be represented by a tenant association, whether incorporated or not; provided, that:

(1) A statement is filed with the Rental Accommodations Division that each tenant consents to the representation and that the association consents to represent the tenant;

(2) Neither the tenant nor the tenant association has revoked consent to the representation; and

(3) The association is represented by an attorney or legal service provided in accordance with paragraph (a) or by a member of the tenant association selected by the members) through a process that can be documented in accordance with § 3918.4.

3918.2 Any individual who wishes to appear in a representative capacity before the Rent Administrator shall file a written notice of appearance stating the individual's name, local address, telephone number, District of Columbia Bar identification number, if applicable, and for whom the appearance is made. Written notice may be filed concurrently with a notice of appeal.

3918.3 An attorney or other representative of record who is served with any documents related to a matter before the Rent Administrator, but who does not wish to or is no longer representing the party before the Rent Administrator, shall immediately notify the party of the service and, if the attorney or representative has entered an appearance before the Rent Administrator, shall file a motion to withdraw in accordance with § 3813.

3918.4 An attorney or other representative may limit the scope of his or her appearance by specifying in the notice of appearance the date, time period, activity, or subject

matter for which the appearance is made. A limited appearance shall terminate automatically, without a motion to withdraw, upon the date or end of the time period specified, or upon the filing of a notice of completion with the Rent Administrator and service of the notice upon all parties.

3918.5 Any person appearing before or transacting business with the Rent Administrator in a representative capacity may be required by order of the Rent Administrator to establish the authority to act on behalf of the represented party by affidavit, written authorization, bylaws of an organization, or other proof the Rent Administrator may deem sufficient.

3918.6 A party who appears on his or her own behalf as provided in § 3918.1(b) may be assisted by a family member or close personal friend, where the party is incapable of presenting his or her case because of a language barrier or physical, mental, or intellectual disability.

3918.7 Nothing in this section shall prohibit the provision of technical assistance by a non-profit community service agency or the Office of the Tenant Advocate.

3918.8 A person may be represented by an attorney or other person who may provide legal services if the attorney or provider is:

(a) An active member in good standing of the District of Columbia Bar or otherwise authorized to practice law pursuant to the Rule 49(c) of the Rules of the District of Columbia Court of Appeals ("D.C. App. R.");

(b) Admitted to practice before the highest court of any state upon the granting by the Rent Administrator of a motion to appear *pro hac vice*; or

(c) A law student or recent graduate who is practicing under the supervision of an attorney authorized to practice law in the District of Columbia in compliance with D.C. App. R. 48, with or without being enrolled in a clinical program.

3918.9 An attorney wishing to appear *pro hac vice* in accordance with § 3918.7(b) shall file a motion in which the attorney shall make, under penalty of perjury, all declarations required for admission *pro hac vice* in the Courts of the District of Columbia under D.C. App. R. 49(c)(7) and that the attorney has read the rules of the Rental Accommodations Division in 14 DCMR chapter 39.

3918.10 A law student or recent graduate wishing to appear as an attorney in accordance with § 3918.7(c) shall:

(a) Meet all requirements of D.C. App. R. 49(b) and (c);

(b) Have the consent and oversight of a supervising attorney assigned to the law student;

(c) Sign a notice of appearance in the case with the supervising attorney and file such notice with the Rent Administrator;

(d) Have the written permission of the client, which must be filed in the record;

(e) Not file any paper unless the law student and supervising attorney sign it;

(f) Not appear at any proceeding without the supervising attorney;

(g) Neither ask for nor receive a fee of any kind for any services provided under this rule, except for the payment of any regular salary made to the law student; and

(h) Comply with any limitations ordered by the Rent Administrator.

3918.11 An attorney who has appeared *pro hac vice* before the Office of Administrative Hearings pursuant to 1 DCMR § 2833 or the Commission pursuant to § 3812 of this title may appear before the Rent Administrator in the same matter if it has been remanded to the Rent Administrator without filing a new motion or notice to so appear.

3918.12 An individual whose practice or appearance before the Office of Administrative Hearings or the Commission has been restricted shall be subject to the same restriction before the Rent Administrator.

3918.13 The Rent Administrator may disqualify or deny, temporarily or permanently, the privilege of appearing or practicing before the Rent Administrator to any individual who is found by the Rent Administrator, after notice and an opportunity to respond, either to be lacking in the requisite qualifications to represent others or to have engaged in unethical, improper or unprofessional conduct; provided, that any individual who is appearing or practicing before the Rent Administrator who willfully misleads the Rent Administrator or the staff of the Rental Accommodations Division by a false statement of fact or law shall be disqualified permanently.

3918.14 An attorney who fails to comply with the provisions of the Rules of Professional Conduct may be referred to the Office of Bar Counsel or may be disqualified from appearing before the Rent Administrator.

3918.15 An individual appearing before the Rent Administrator who is or ever has been a member of the District of Columbia Bar or the bar of any state shall be subject to the standards of conduct for an attorney under this section, regardless of whether that person appears as a non-attorney representative; provided, that nothing in this

subsection shall prohibit an individual, receiver, or beneficiary from appearing *pro se* in accordance with § 3918.1(b).

3812.16 In the event of any conflict between this section and D.C. App. R. 48 or 49, the D.C. App. R. shall control. If the D.C. App. R. would permit an individual to appear before a tribunal but this section would not, the individual may appear unless that individual's practice or appearance has been specifically restricted for other reasons or the individual fails to make any required filings with the Rent Administrator. Except to the extent permitted by D.C. App. R. 49(c)(5), allowing District agencies to regulate non-attorney practice, an individual not authorized to practice law in the District of Columbia may not appear in a representative before the Rent Administrator.

3919 OFFICIAL RECORD OF A PROCEEDING

3919.1 The official record of a petition or complaint filed with the Rental Accommodations Division shall consist of the following:

(a) All decisions or orders of the Rent Administrator;

(b) All notices, transcripts, documents, and exhibits filed as part of a petition or application before Rental Accommodations Division, the Rent Administrator, or the Commission;

(c) Memoranda, if any, of *ex parte* communications as required by § 3916;

(d) Housing accommodation registration files and any other documents found in the public record of which the Rent Administrator took official notice; and

(e) All petitions, complaints, or pleadings filed with the Rent Administrator in the course of the proceeding.

3920 MOTIONS

3920.1 A request for the Rent Administrator to take a particular action shall be made by filing a written motion.

3920.2 Motions shall be filed with the Rent Administrator in accordance with § 3901 and served on other parties in accordance with § 3911.

3920.3 A written motion may be filed at any time unless the time for filing a specific type of motion is prescribed by the rules in this chapter or the provisions of the Act.

3920.4 The party making a motion shall have the burden of proving that the requested action is warranted. A written motion shall state the legal and factual reasons why

the Rent Administrator should take the requested action, and a separate memorandum of points and authorities does not need to be filed.

3920.5 When a motion is based on information not on the record, a party may support or oppose the motion by attaching affidavits, declarations, or other papers. The Rent Administrator may order a party to file supporting affidavits, declarations, or other papers.

3920.6 Before filing any motion, except a motion to dispose of a petition or application or for reconsideration of a final decision and order, a party must make a good faith effort to ask all parties if they agree to the motion. The motion shall state what effort was made and whether all other parties agreed to the motion.

(a) A "good faith effort" means a reasonable attempt, considering all the circumstances, to contact a party or representative in person, by telephone, by fax, by e-mail, or by other means.

(b) Contact by U.S. mail is a good faith effort only if no other means is reasonably available (for example, not having another party's telephone number or e-mail address).

(c) By itself, serving a party with the motion is not a good faith effort to ask if the party agrees to the motion.

(d) If a party fails to make a good faith effort to seek agreement, the Rent Administrator may deny the motion without prejudice.

3920.7 Any party may file a response to a motion within ten (10) days after service of the motion. No further filings related to the motion are permitted unless ordered by the Rent Administrator.

3920.8 A motion for expedited hearing or other form of expedited relief shall be acted upon promptly.

3920.9 The Rent Administrator shall grant or deny each motion by issuing a written order that shall be served on all parties, or a party's representative of record, by U.S. mail in accordance with § 3911.3.

3921 OFFICIAL NOTICE

3921.1 During the disposition of a petition or complaint, the Rent Administrator, on his or her own motion or on the motion of a party, may take official notice of the following:

(a) Matters of common knowledge;

(b) Any information contained in the record of the Rental Accommodations Division; or

(c) Any information contained in the records of any federal or District agency, board or commission; provided, that all parties have been given notice of the Rent Administrator's intention to do so and have been given an opportunity to show the contrary.

3921.2 Official notice taken of any fact shall satisfy a party's burden of proving that fact.

3921.3 If the Rent Administrator takes official notice of any matter provided in § 3921.1, all parties are entitled to be informed in writing of the fact found by the Rent Administrator, and to be provided a period of no less than ten (10) days to contest the proposed findings of fact before a final decision is issued.

3921.4 Any registration files or other public documents of which the Rent Administrator takes official notice shall be entered into the official record of the proceeding in accordance with § 3919.1(e).

3922 INTERLOCUTORY APPEALS

3922.1 An interlocutory appeal is an appeal taken prior to the issuance of a final decisions or orders of the Rent Administrator on a proceeding.

3922.2 An interlocutory appeal shall only be permitted if the Rent Administrator certifies the issue for review by the Commission on his or her own initiative or by motion of any party to a proceeding before the Rental Accommodations Division.

3922.3 A party seeking review by interlocutory appeal shall file a motion for certification within ten (10) days of a ruling by the Rent Administrator. The Rent Administrator shall rule on the motion within ten (10) days following the filing of the motion.

3922.4 The Rent Administrator shall certify an interlocutory appeal only if he or she determines that the issue presented is of such importance in a proceeding that it requires the immediate attention of the Commission, and only if the following are shown:

(a) The issue presented involves an important question of law or policy requiring interpretation of the Act or this title, and about which there is substantial basis for difference of opinion; and

(b) Either of the following applies:

(1) An immediate decision will materially advance the disposition of a petition, application, or complaint before the Rental Accommodations Division; or

(2) Refusal to make or issue an immediate ruling will cause undue harm to the parties or the public.

3922.5 If certification is denied, the ruling may be raised as part of an appeal of the final decision of the Rent Administrator or, if the case is later transferred to the Office of Administrative Hearings, the final decision of the Office of Administrative Hearing.

3923 DECISIONS OF THE RENT ADMINISTRATOR

3923.1 The Rent Administrator shall issue a final order for each petition, application, or complaint filed with the Rental Accommodations Division for which the Rent Administrator retains jurisdiction and is not required to transfer to the Office of Administrative Hearings by Chapters 41-44 of this title.

3923.2 A final order shall contain the following:

(a) Findings of fact and conclusions of law (including the reasons or basis of those findings) upon each issue presented in the proceeding;

(b) The final disposition of the petition or complaint, (including appropriate relief and any penalties, if applicable under the Act); and

(c) A statement of the parties' right to appeal.

3923.3 A decision shall become final and effective when issued pursuant to §§ 3923.1 and 3923.2, except that if a motion for reconsideration is timely filed, the decision shall not become final until the motion is disposed of in accordance with § 3924.

3923.4 The ten (10) business day time limit in which an appeal to the Commission shall be filed, as prescribed in § 216(h) of the Act (D.C. Official Code § 42-3502.16(h)) and § 3802.2 of this title, shall begin to run when the decision becomes final.

3924 RECONSIDERATION OR MODIFICATION OF FINAL ORDERS

3924.1 Any party adversely affected by a final order of the Rent Administrator in a proceeding may file a motion for reconsideration or modification with the Rent Administrator within ten (10) business days of service of the order; provided, that an order issued on reconsideration is not subject to reconsideration.

3924.2 If any party files a motion for reconsideration or modification within the time provided in § 3924.1, the effect of the final order shall be stayed and the time for seeking review of the order by the Commission shall not start to run until either the Rent Administrator rules on the motion or the motion is denied automatically by the expiration of the time provided in § 3924.4.

3924.3 A motion for reconsideration shall contain a short and plain statement of the specific grounds on which the moving party considers a final order to be erroneous or unlawful. Grounds for reconsideration shall be as follows:

(a) The moving party failed to respond to a motion of another party or to respond to an order of the Rent Administrator, which resulted in a dismissal or denial of the party's position, and the party has good reason not doing so and would have presented an adequate claim or defense;

(b) The decision or order contains a clear mistake in the application of law;

(c) The decision or order contains a clerical mistake or clear mistake of the factual record;

(d) New evidence has been discovered that previously was not reasonably available to the moving party; or

(e) There has been a change in circumstances since the initiation of the petition or application that makes any relief provided by the decision impossible or inequitable.

3924.4 Within thirty (30) days of the filing of a motion for reconsideration, the Rent Administrator shall grant the motion, deny the motion or issue an order enlarging the time for later disposition of the motion.

3924.5 Failure of the Rent Administrator to act in the time prescribed by § 3924.4 shall constitute a denial of the motion for reconsideration.

3924.6 A motion for modification shall contain a short and plain statement of a specific error that is typographical, numerical, or technical in nature.

3924.7 The ten (10) business day time limit in which an appeal to the Commission shall be filed, as prescribed in § 216(h) of the Act (D.C. Official Code § 42-3502.16(h)) and § 3802.2 of this title, shall begin to run when a motion for reconsideration or modification is granted or denied.

3925 LATE FILINGS AND AMENDMENT OF PLEADINGS

3925.1 When a party is allowed to or required to take action within a specific time period under this chapter or an order of the Rent Administrator, the party may request, by motion, an extension of the time period, even after the period has expired.

3925.2 Motions under this section shall set forth good cause for the relief requested.

3925.3 Before filing a motion under this section, a party must make a good faith effort to ask all parties if they agree to the motion, in accordance with § 3920.6.

3926 SHOW CAUSE ORDERS

3926.1 A show cause proceeding may be initiated by the Rent Administrator after an investigation by the Rent Administrator has resulted in a determination that there are substantial grounds to believe that violations of the Act may have occurred.

3926.2 The investigation of possible violations of the Act may be conducted as a result of the review of the records of the Rental Accommodations Division, or the records of federal or District courts and agencies.

3926.3 Investigations of possible violations may also be conducted on the basis of complaints and allegations received orally or in writing by the Rent Administrator.

3926.4 If an investigation by the Rent Administrator finds substantial grounds to believe that possible violations of the Act have occurred, the Rent Administrator may prepare and serve an order to show cause on the alleged violator and file a copy with the Office of Administrative Hearings.

3926.5 A determination by the Rent Administrator, after an investigation, that there are no substantial grounds to believe a possible violation of the Act has occurred shall not preclude any person from seeking any relief to which they may be entitled under the Act in any forum, nor shall such a determination provide safe harbor or other defense to a person alleged to have violated the Act.

3926.6 An order to show cause shall state clearly the section of the Act or regulation that has allegedly been violated, along with a brief statement of the evidence found during the investigation that supports the determination that the alleged violation has occurred.

3926.7 An order to show cause shall also set forth the proposed corrective action that the Rent Administrator seeks or the sanction that the Rent Administrator seeks to have imposed upon the alleged violator, which may include a civil fine of up to five thousand dollars ($5,000) per violation pursuant to § 901(b) of the Act (D.C. Official Code § 42-3509.01(b)).

3926.8 Notice of an order to show cause shall be served on the alleged violator, in accordance with the provisions of § 3911, on the same day as the as the order to show cause is filed with the Office of Administrative Hearings.

3926.9 At a show cause hearing, the burden of proof shall be upon the Rent Administrator, except claims or defenses for which the burden is shifted as provided by the Act, Chapters 41-44 of this title, or 1 DCMR Chapter 28 and 1 DCMR §§ 2920-2941.

3926.10 A show cause hearing shall be conducted by the Office of Administrative Hearings consistent with the provisions of 1 DCMR Chapters 28 and 29.

3926.11 The issues in a show cause hearing shall be disposed of in a final decision and order of the Office of Administrative Hearings, which may be appealed to the Commission in accordance with Chapter 38.

3926.12 There shall be no intervenors as a matter of right in a show cause hearing.

3926.13 A request to intervene may be made by motion to the Office of Administrative Hearings in accordance with 1 DCMR § 2816.

3926.14 Affected housing providers, tenants, and other persons with relevant evidence shall be permitted to testify as witnesses at show cause hearings.

3927 COMPLIANCE

3927.1 The Rent Administrator shall issue a notice of non-compliance when an investigation results in a determination that a failure to comply with an order of the Rent Administrator, Office of Administrative Hearings, or the Commission may have occurred.

3927.2 An investigation of possible failure to comply with an order of the Rent Administrator, Office of Administrative Hearings, or the Commission may be conducted for the following reasons:

(a) As a result of the review of the records of the Rental Accommodations Division and other District agencies;

(b) On the basis of complaints and allegations received orally or in writing by the Rent Administrator, the Office of Administrative Hearings, or the Commission; or

(c) As a result of an investigation undertaken by the Rent Administrator.

3927.3 If an investigation by the Rent Administrator has found substantial grounds to believe that possible failure to comply with an order may have occurred, a notice of non-compliance shall be prepared and served on the alleged violator.

3927.4 The notice of non-compliance shall state clearly the section of the order which has allegedly not been complied with, along with a brief statement of the substantial evidence found during the investigation which supports the determination that a failure to comply has occurred.

3927.5 A notice of non-compliance shall be served on the alleged violator in accordance with the service of notice provisions under § 3911 and shall contain a statement providing the alleged violator with fifteen (15) days to reply to the notice of non-compliance.

3927.6 If the alleged violator fails to demonstrate compliance or reply to the notice of non-compliance within fifteen (15) days of receipt of the notice of non-compliance, the Rent Administrator shall immediately refer the matter to the Office of the Attorney General for appropriate enforcement or to the Department of Consumer and Regulatory Affairs if the conduct or inaction also constitutes a violation of any law or regulation enforced by that agency.

3928 RELIEF FROM JUDGMENT

3928.1 On motion and upon such terms as are just, the Rent Administrator may relieve a party from a final order issued by the Rent Administrator for the following reasons:

(a) Mistake, inadvertence, surprise, excusable neglect; newly discovered evidence which by due diligence could not have been discovered in time to move for reconsideration under § 3924;

(b) Fraud, misrepresentation, or other misconduct of an adverse party; or

(c) The decision has been satisfied, released, or discharged, or a prior decision upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the decision have prospective application.

3928.2 A motion filed pursuant to § 3928.1 shall be filed within a reasonable time after the date the grounds for relief first exist or are discovered; provided, that motions filed pursuant to § 3928.1(a) or (b) shall not be filed more than one (1) year after the order was issued.

3928.3 The filing of a motion under this section does not stay the effectiveness of a final order or extend the time to file an appeal.

3929 RENT ADMINISTRATOR PROCEDURES GENERALLY

3929.1 When these rules are silent on a procedural issue before the Rent Administrator, issues must be decided by using as guidance the current rules of civil procedure published and followed by the Superior Court of the District of Columbia.

3930 ATTORNEY'S FEES-RENT ADMINISTRATOR

3930.1 A prevailing party in a contested case may be awarded attorney's fees for work performed while a matter is pending before the Rent Administrator and Rental Accommodations Division, in accordance with § 3825.

3930.2 A motion for attorney's fees shall be filed with the Office of Administrative Hearings or the Commission, as applicable.

3999 DEFINITIONS

3999.1 The provisions of § 3899 of Chapter 38 of this title and the definitions set forth in that section shall be applicable to this chapter.

CHAPTER 40: [REPEALED]

CHAPTER 41: COVERAGE AND REGISTRATION

SECTION

4100 SCOPE AND COVERAGE OF THE RENTAL HOUSING ACT

4100.1 The jurisdiction of the Rent Administrator and of the Rental Housing Commission extends to all rental units in the District of Columbia that are covered by the Act and to all housing accommodations in which a covered rental unit is located, except for matters under titles III and VIII of the Act (D.C. Official Code §§ 42-3503.01 *et seq.* and 42-3507.01 *et seq.*).

4100.2 The jurisdiction of the Rent Administrator and of the Rental Housing Commission extends to all tenants of a rental unit covered by the Act and to all housing providers of a covered rental unit, except for matters under titles III and VIII of the Act (D.C. Official Code §§ 42-3503.01 *et seq.* and §§ 42-3507.01 *et seq.*).

4100.3 All rental units in the District of Columbia are covered by the Act except those rental units excluded from coverage by § 205(e) of the Act (D.C. Official Code § 42-3502.05(e)) and § 4105 of this chapter; provided, that no rental unit shall be excluded under § 205(e)(4) of the Act (the non-profit exclusion) without the prior approval of the Rent Administrator issued pursuant to § 4105 of this chapter.

4101 REGISTRATION REQUIREMENTS OF RENTAL UNITS AND HOUSING ACCOMMODATIONS

4101.1 Each rental unit covered by the Act, as provided by § 4100.3, and the housing accommodation of which a covered rental unit is a part, including rental units

exempt from the Rent Stabilization Program, shall be registered with the Rental Accommodations Division in accordance with this chapter.

4101.2 The terms "to register," "to be registered," and "registration" shall mean filing, in accordance with § 4102, a form approved by the Rent Administrator ("Registration/Claim of Exemption Form") that contains:

(a) For a rental unit covered by the Rent Stabilization Program, the information required to establish and regulate rents charged pursuant to § 205(f) of the Act (D.C. Official Code § 42-3502.05(f)) and Chapter 42 of this title; or

(b) For rental units that may be exempt from the Rent Stabilization Program, the information required to establish the claim of exemption pursuant to § 205(a) of the Act (D.C. Official Code § 42-3502.05(a)) and § 4106 of this chapter.

4101.3 A rental unit shall be deemed registered only if the housing provider both: (1) files a Registration/Claim of Exemption Form in accordance with § 4102; and (2) provides timely notice of the filing to the tenant(s) in accordance with § 4101.6. A housing provider shall file and provide notice of a registration when:

(a) Any rental unit is newly created or established, including existing housing being made available for rent;

(b) A housing accommodation is converted to condominium or cooperative housing and any converted unit is subject to § 208(b) of the Rental Housing Conversion and Sale Act of 1980 (D.C. Official Code § 42-3402.08(b);

(c) Any rental unit ceases to be excluded from the Act under § 205(e) of the Act (D.C. Official Code § 42-3502.05(e)) and § 4105 of this chapter; or

(d) Any rental unit subject to the Act has not been previously, properly registered for any reason.

4101.4 Until the date all housing providers are required to re-register using the internet-accessible portal pursuant to § 205(f)(1) of the Act (D.C. Official Code § 42-3502.05(f)(1)), the registration requirements of this chapter shall be satisfied for any rental unit that was previously, properly registered under the following laws or regulations only if no change in circumstances has required the housing provider to file a new or amended registration:

(a) The Rental Housing Act of 1980 only if the prior registration claimed an exemption from rent stabilization and the rental unit can be claimed as exempt from the Rent Stabilization Program on the same basis under current law;

(b) The Rental Housing Emergency Act of 1985 (D.C. Law 6-18); or

(c) Any version of this chapter promulgated by emergency or final rulemaking before the effective date provided by § 3800.10.

4101.5 All Registration/Claim of Exemption Forms filed with the Rent Administrator under the Act and this chapter shall be available for public inspection in the Housing Resource Center of the Department of Housing and Community Development and by the internet-accessible database maintained by the Rent Administrator in accordance with § 203c of the Act (D.C. Official Code § 42-3502.03c) and § 3900.9 of this title.

4101.6 A housing provider who files a Registration/Claim of Exemption Form under the Act shall, within fifteen (15) days of the issuance of a registration or exemption number, as applicable, by the Rental Accommodations Division, provide a true copy of the form bearing the registration or exemption number to all tenants of the housing accommodation as follows:

(a) If the housing accommodation to which the form applies contains multiple rental units and common elements that are owned, managed, or maintained by the housing provider, by posting the copy in a conspicuous place at the premises indicated on the form and keeping the copy posted in that place for the duration of its validity, until a new or amended filing is required by § 4103; or

(b) If the housing accommodation to which the form applies consists of a single rental unit, or no suitable location is available at the housing accommodation for posting as described in paragraph (a):

(1) By sending a copy to each tenant of the rental unit or housing accommodation by U.S. mail or a commercial delivery service by any method that includes a certificate of mailing; or

(2) By personal service on each tenant.

4101.7 A rental unit or housing accommodation for which a Registration/Claim of Exemption Form has not been timely posted or mailed shall be deemed unregistered or not exempt until the housing provider complies with the requirements of this section.

4101.8 Any housing provider who has failed to meet the registration requirements of this chapter shall not increase the rent or reduce or eliminate related services or facilities for an unregistered rental unit or benefit from an exemption from the Rent Stabilization Program, whether or not the unit would have been eligible for an exemption, until sixty (60) days after the housing provider properly registers the unit.

4102 REGISTRATION PROCEDURES

4102.1 Each rental unit required to be registered by this chapter shall be listed on a Registration/Claim of Exemption Form filed with the Rental Accommodations Division in accordance with § 3901 for the housing accommodation of which the rental unit is a part.

4102.2 Except as provided by § 4102.3, by § 4107 if claiming the small landlord exemption, or by § 4108 if claiming the cooperative exemption, each housing accommodation that has a separate street address shall be registered by filing a separate Registration/Claim of Exemption Form with the Rental Accommodations Division.

4102.3 If a multi-building housing complex consists of more than one (1) street address but is operated under a single housing business license, the housing provider shall file a single Registration/Claim of Exemption Form with the Rental Accommodations Division to register the complex as a single housing accommodation, stating each street address comprising the housing accommodation. If a multi-building housing complex, or a single structure containing multiple rental units with one street address, is operated under more than one (1) housing business license, a housing provider shall file a Registration/Claim of Exemption Form to register one housing accommodation for each housing business license used.

4102.4 A residential condominium unit or cooperative housing unit rented or offered for rent by its separate owner or proprietary leaseholder or member shall be deemed to be a housing accommodation consisting of one (1) rental unit, and shall be registered on a separate Registration/Claim of Exemption Form, in accordance with § 4102.2, except where the housing provider owns more than one (1) and fewer than five (5) rental units in the District of Columbia and claims the small landlord exemption in accordance with § 4107. Each condominium unit leased to and occupied by an elderly tenant or tenant with a disability with a qualifying income by a condominium association pursuant to § 208(a) of the Rental Housing Conversion and Sale Act of 1980 (D.C. Official Code § 42-3402.08(a)) shall be registered by the association as a rental unit within the housing accommodation that was converted pursuant to the Rental Housing Conversion and Sale Act of 1980.

4102.5 A Registration/Claim of Exemption Form that is filed by a housing provider shall be accompanied by a copy of the housing business license for the premises that constitutes a housing accommodation, as required by 14 DCMR §§ 200-207. The street address of a housing accommodation on a Registration/Claim of Exemption Form shall be the same as the street address shown on the housing business license.

4102.6 Each Registration/Claim of Exemption Form shall contain:

(a) The name, street address (not including mailbox services or post office box addresses), email address, and telephone number of each owner of the housing accommodation, including, if claiming the small landlord or cooperative exemptions pursuant to §§ 4107 or 4108, each person with an interest, directly or indirectly, in the housing accommodation;

(b) If the owner is a non-resident of the District of Columbia, the name and street address (not including mailbox services or post office box addresses) and any other contact information of the registered agent as required by the Department of Consumer and Regulatory Affairs pursuant to D.C. Official Code § 42-903(b) and 14 DCMR § 203, or the same information if a registered agent is maintained by a resident owner; and

(c) The name, street address (not including mailbox services or post office box addresses), email address, and telephone number of any managing agent of the housing accommodation, if one is maintained.

4102.7 If a housing accommodation required to be registered under this chapter contains one (1) or more rental units excluded from coverage under the Act pursuant to § 205(e) of the Act (D.C. Official Code § 42-3502.05(e)), or one (1) or more rental units exempt from the Rent Stabilization Program pursuant to § 205(a) of the Act (D.C. Official Code § 205(a)), the housing provider shall identify the excluded or exempt rental units on the Registration/Claim of Exemption Form for the housing accommodation and shall specify the section of the Act under which the exclusion or exemption is claimed. Any units exempted from the Rent Stabilization Program solely by reason of a tenant-specific subsidy shall be separately identified as exempt by an Amended Registration Form in accordance with § 4106.11.

4102.8 A housing provider registering under the Act shall submit to the Rent Administrator an original and one (1) copy of each Registration/Claim of Exemption Form to be filed.

4102.9 If a housing provider files a Registration/Claim of Exemption Form upon the termination of an exemption, documentation supporting the computation of the allowable rent for the formerly-exempt unit, in accordance with § 209 of the Act (D.C. Official Code § 42-3502.09) and § 4203 of this chapter, shall be filed at the same time as the form.

4102.10 The Rent Administrator shall accept for filing, date-stamp, and, after a review of the filing, assign a registration or exemption number to each housing accommodation for which the Registration/Claim of Exemption Form meets the requirements of this chapter and shall promptly return to the housing provider the date-stamped copy of the form bearing the registration or exemption number.

4102.11 If the housing accommodation or any rental units being registered are covered by the Rent Stabilization Program, the registration number shall be identical to the

housing business license number issued by the D.C. Department of Consumer and Regulatory Affairs. If the housing accommodation is or any rental units being registered are claimed to be exempt from the Rent Stabilization Program, the Rent Administrator shall issue an exemption number in accordance with the procedures of the Rental Accommodations Division.

4103 CHANGES TO REGISTRATION/CLAIM OF EXEMPTION FORMS

4103.1 A housing provider of a rental unit or units covered by the Act shall file an amendment to the Registration/Claim of Exemption Form, on a form provided by the Rent Administrator, in the following circumstances:

(a) Within thirty (30) days after any change in the managing agent of a registered housing accommodation;

(b) Within thirty (30) days after any change in any contact information required by 4102.6; or

(c) For rental units covered by the Rent Stabilization Program, within thirty (30) days after approval of a change in the previously registered related services or facilities of a rental unit pursuant to § 211 of the Act and § 4211 of this title.

4103.2 A housing provider of a rental unit or units covered by the Act shall file a new Registration/Claim of Exemption Form in the following circumstances:

(a) Within thirty (30) days after any change in the ownership of a registered housing accommodation; or

(b) Within thirty (30) days after any change that causes a housing accommodation to no longer be exempt from the Rent Stabilization Program; except in the case of tenant-specific subsidy exemptions claimed in accordance with § 4106.11.

4103.3 A housing provider who files an amendment to a Registration/Claim of Exemption Form as required by § 4103.1 or who files a new form as required by § 4103.2 shall post or mail a date-stamped copy of the amendment form or the new form in accordance with § 4101.6.

4103.4 A housing provider who fails to file an amendment to or a new Registration/Claim of Exemption Form within the time required by § 4103.1 or .3 or to provide notice to tenants in accordance with § 4101.6 shall be deemed to have failed to register the rental unit or housing accommodation starting on the date on which the change in circumstances required housing provider to file the required form. If the housing provider files an amendment or new registration after the required time, the housing accommodation shall only be deemed properly registered starting on the date on that the required form is accepted for filing by the Rent Administrator; provided,

that the housing provider also timely complies with the notice requirements of § 4101.6.

4104 DEFECTIVE REGISTRATION

4104.1 The Rent Administrator shall review each Registration/Claim of Exemption Form after accepting it for filing in accordance with § 4102.9 in order to determine if the form has been properly completed.

4104.2 If the Rent Administrator determines at any time that a registration is defective under § 4104.3, the Rent Administrator shall notify the housing provider in writing of the specific defect(s) and allow the housing provider thirty (30) days to correct the defect(s) by returning a properly completed Registration/Claim of Exemption Form to the Rent Administrator.

4104.3 A "defective registration" means a Registration/Claim of Exemption Form contains incorrect or is missing information that is *de minimis* (trivial or minor) and does not materially or substantially affect the validity of the registration. Examples of such defects may include, but are not limited to, the following:

(a) The form is not signed;

(b) Information is entered in incorrectly on the form;

(c) The housing business license required by § 4102.5 exists but is not included;

(d) Some, but not all, contact information required by § 4102.6 is missing or incorrect; provided that all required persons are correctly identified on the form;

(e) Supporting documentation for a claimed exemption required by § 4106 exists but is not included; or

(f) Proof that the rental unit fee was paid as required by § 4109 exists but is not included.

4104.4 A defective registration shall not be deemed invalid solely because of a defective registration, unless a housing provider fails to correct the defect(s) after being provided notice.

4104.5 If a housing provider has been notified by the Rent Administrator of a defective registration and the housing provider does not correct the defects within thirty (30) days of the issuance of the notice, the registration shall be deemed invalid, and the housing provider shall be found to have failed to meet the registration requirements of this chapter, retroactive to the date of its filing.

4104.6 If a housing provider's registration is invalidated pursuant to § 4104.5, the housing provider shall file a new Registration/Claim of Exemption Form in accordance with § 4102 and post or serve a copy of the form in accordance with § 4101.6.

4104.7 If a housing provider corrects all defects identified by the Rent Administrator within thirty (30) days of notice, the correction(s) shall be deemed incorporated into the registration, retroactive to the date of its filing.

4104.8 If incorrect or missing information resulting in a defective registration appears on the form that was posted or served in accordance with § 4101.6, the housing provider shall post or serve a true copy of the correction form, in the same manner as done originally, within fifteen (15) days of returning the correction form to the Rent Administrator.

4104.9 Nothing in this section shall be construed to protect or limit the liability of a housing provider that deceptively, fraudulently, in bad faith, or willfully omits or misstates any information required for registration.

4104.10 Registration/Claim of Exemption Forms that contain substantial or material misstatements or omissions shall be deemed invalid, and the housing provider shall be found to have failed to meet the registration requirements of this chapter, retroactive to the date of filing. The Rent Administrator shall promptly notify a housing provider in writing if a registration is discovered to be invalid for those reasons or is invalidated pursuant to § 4104.5 and may take any available action or pursue any available remedies to enforce the registration requirements of the Act.

4105 EXCLUSIONS FROM COVERAGE BY THE ACT

4105.1 A rental unit shall be excluded from coverage of the Act, pursuant to § 205(e) of the Act (D.C. Official Code § 42-3502.05(e)), under the following circumstances:

(a) If the rental unit is operated by a foreign government as a residence for diplomatic personnel;

(b) If the rental unit is operated by a hospital, convalescent, nursing or personal care home, or other entity which has as its primary purpose providing diagnostic care and treatment of disease, including therapeutic transitional treatment facilities certified in accordance with D.C. Official Code § 44-1204, and the rental unit is occupied or intended for occupancy by a recipient of the diagnostic care or treatment of disease; or

(c) If the rental unit is or is part of a dormitory as defined in § 3899.2 of this title, and the rental unit is occupied or intended for occupancy by a matriculating student.

4105.2 A rental unit which is used or intended for use as long-term temporary housing under § 205(e)(4) of the Act (D.C. Official Code § 42-3502.05(e)(4)) may be

excluded from coverage by the Act only with the prior approval of the Rent Administrator if the housing provider files a request for an order of exclusion ("non-profit charitable application") in accordance with § 4105.3.

4105.3 A non-profit charitable application shall be filed in duplicate and shall include the following:

(a) The name and street address (not including mailbox services or post office box addresses) of the applicant housing provider, and documentation of the applicant's exemption from federal income tax under § 501(c)(3) of the Internal Revenue Code (26 USC § 501(c)(3)) and exemption from the District of Columbia franchise tax under D.C. Official Code § 47-1802.01(c)(3);

(b) A schedule identifying each rental unit covered by the application, whether the rental unit is vacant or occupied and, if occupied, the name of the tenant and the rent for the rental unit, if any;

(c) The plan of comprehensive social services to be offered by the applicant housing provider to the tenant, listing in detail the services to be provided and the obligations to be assumed by the tenant and the applicant housing provider, and the criteria for qualification to be a tenant of a rental unit excluded from coverage under the Act;

(d) A schedule of proposed rents for each rental unit included in the application including the proposed rent for each rental unit for which exclusion may be denied under § 4105.6(b).

4105.4 Upon receipt of a properly executed and filed non-profit charitable application, the Rent Administrator shall promptly notify in writing the tenant of each occupied rental unit affected by the application of the following:

(a) The pendency of the application;

(b) The tenant's right to participate voluntarily in the proposed plan of comprehensive social services in which case the tenant's rental unit may be excluded from coverage by the Act, or to decline to participate in the proposed plan in which case the tenant's rental unit shall be covered by the Act; provided, that no tenant may elect to participate in the proposed plan if the tenant does not meet the income requirements of § 4105.7(b); and

(c) The tenant's right to oppose or contest the non-profit charitable application by filing written exceptions and objections with the Rent Administrator.

4105.5 The notice required by § 4105.4 shall be in a form approved by the Rent Administrator, and shall:

(a) Explain the plan and the effect of the proposed exclusion in sufficient detail to permit the tenant to make an informed choice; and give all affected tenants not less than thirty (30) days from the service of the notice in which to make the election to participate in the plan or not and to file written exceptions and objections, if any;

(b) State clearly that an affirmative election to participate in the plan is irrevocable for the duration of the tenancy;

(c) Provide a space for the tenant to indicate his or her irrevocable election to participate or not in the proposed comprehensive plan, or to decline to participate and state his or her exceptions and objections, if any, to the plan; and

(d) Be returnable to the Rent Administrator over the tenant's signature.

4105.6 Upon consideration of properly filed exceptions and objections in accordance with § 4105.5(a), the Rent Administrator shall either:

(a) Approve a non-profit charitable application for each vacant rental unit and each rental unit occupied by a tenant who elects to participate in the applicant's proposed plan of comprehensive social services; or

(b) Dismiss a non-profit charitable application for each rental unit occupied by a tenant who elects not to participate in the applicant's proposed plan or who fails to make an election within the time provided; provided, that the Rent Administrator shall grant exclusion to a covered, occupied rental unit at any time if the eligible tenants under § 4105.7(b) notify the Rent Administrator in writing that they elect to participate in the plan.

4105.7 The Rent Administrator shall approve a non-profit charitable application and issue an order of exclusion only if the Rent Administrator determines the following:

(a) The rental unit shall be operated under the proposed plan of comprehensive social services;

(b) The rental unit shall be occupied by a family of one (1) or more members that has a household income less than fifty percent (50%) of the median income in the District of Columbia for a family of the same size; or a family who previously indicated agreement to participate in the housing provider's plan under the Act or prior rent control law and met the income requirements at the time of the previous election;

(c) The rental unit is occupied as long-term temporary housing; and

(d) The applicant housing provider is recognized as a non-profit charitable corporation by the District of Columbia and federal governments.

4105.8 An order by the Rent Administrator denying a non-profit charitable application may be appealed to the Commission within ten (10) business days of its issuance, in accordance with Chapter 38 of this title.

4105.9 A housing provider that claims the non-profit charitable exclusion shall be subject to the registration requirements of this chapter and all other requirements of the Act until a final order of exclusion is issued.

4105.10 A housing provider that fails to substantially comply with the terms of an order of exclusion shall not be excluded from coverage of the Act. If a determination is made after any hearing on the record that a housing provider has continuously or repeatedly failed to substantially comply with the terms of an exclusion order, the Rent Administrator may rescind the exclusion order and require the housing provider to reapply for exclusion or register the housing accommodation under the Act.

4105.11 At the time a prospective tenant files an application to lease any rental unit covered by an exclusion order, or, if no application is required, prior to the execution of, or oral agreement to, a lease or rental agreement, the housing provider shall provide the tenant with a copy of the final exclusion order issued by the Rent Administrator.

4105.12 Upon either the dissolution of the housing provider's non-profit status exemption from federal income tax under § 501(c)(3) of the Internal Revenue Code (26 USC § 501(c)(3)) and exemption from the District of Columbia franchise tax under D.C. Official Code § 47-1802.01(c)(3) or termination of the plan of comprehensive social services to be offered by the applicant housing provider to the tenant ("Charitable Program"), each rental unit shall be covered by the registration requirements of the chapter and all other requirements of the Act.

4105.13 Upon the transfer of a Charitable Program from the non-profit housing provider to another housing provider, the new non-profit housing provider must file a non-profit charitable organization exclusion application in accordance with § 4105.13 and comply with the requirements of this chapter.

4106 CLAIMS OF EXEMPTION FROM RENT STABILIZATION PROGRAM

4106.1 A housing provider who claims that a rental unit is exempt from the Rent Stabilization Program shall file a Registration/Claim of Exemption Form with the Rent Administrator in accordance with § 4101. All rental units in the District of Columbia shall be covered by the Rent Stabilization Program unless a valid claim of exemption is filed in accordance with this section.

4106.2 Each Registration/Claim of Exemption Form shall contain a signed oath or affirmation by the housing provider that a claim of exemption is valid.

4106.3 A Registration/Claim of Exemption Form that is accepted for filing in accordance with § 4102.9 shall, after review, be issued an exemption number by the Rent Administrator if the claimed exemption appears valid.

4106.4 The Rent Administrator may initiate a review of a claim of exemption at any time to require a housing provider to show his or her entitlement to the exemption through a show cause proceeding, in accordance with § 3926.

4106.5 A housing provider that claims an exemption shall bear the burden, in all circumstances, of proving its entitlement to the exemption and that its claim was properly and timely filed.

4106.6 Failure to file or to later provide accurate information in accordance with the Act and this section may result in the rejection of the filing of the Registration/Claim of Exemption Form, a determination by the Rent Administrator that the registration is defective, a determination in any legal proceeding that the housing provider has failed to meet the registration requirements of this chapter, or the imposition of other penalties and sanctions, including rent refunds and civil fines under § 901 of the Act (D.C. Official Code § 42-3509.01).

4106.7 Claims of exemption found to contain defects may be corrected by the housing provider in accordance with § 4104.

4106.8 Prior to the execution of a lease or other rental agreement, a prospective tenant of any unit claimed to be exempt under § 205(a) of the Act (D.C. Official Code § 42-3502.05(a)) and this section shall receive from the housing provider a written notice, on a form published by the Rent Administrator in accordance with § 222(b)(1) of the Act (D.C. Official Code § 42-3502.22(b)(1)) and § 4111 of this chapter, advising the prospective tenant that rent increases for the housing accommodation are not regulated by the Rent Stabilization Program. As provided in §§ 4111.8-.10, for any rental unit that could otherwise be properly claimed as exempt but for which a tenant did not receive notice of the exempt status prior to execution of the rental agreement, the housing provider shall be deemed to have not met the registration requirements of this chapter until sixty (60) days after the tenant is provided with the required notice.

4106.9 Notwithstanding any other requirement of this chapter, a housing accommodation or rental unit that is owned by the federal or District of Columbia government or an instrumentality thereof shall be exempt from the Rent Stabilization Program under § 205(a)(1) of the Act (D.C. Official Code § 42-3502.05(a)(1)) without filing a Registration/Claim of Exemption Form.

4106.10 A rental unit may be exempt under § 205(a)(1) of the Act (D.C. Official Code § 42-3502.05(a)(1)) (the government subsidy exemption), as long as the rental unit is

enrolled in a formal program of the federal or District of Columbia government under which the operating expenses or mortgage are subsidized.

4106.11 If any rental unit may be exempt under § 205(a)(1) of the Act (D.C. Official Code § 42-3502.05(a)(1)) solely because of a tenant-specific rent subsidy, such as the Housing Choice Voucher program, the unit shall be registered as if covered by the Rent Stabilization Program, and the housing provider shall file an Amended Registration Form, as published by the Rent Administrator, for the exempt unit stating the rent charged prior to the exempt tenancy, the identification of the subsidy program, and any supporting documentation as the Rent Administrator may require. The housing provider shall file an Amended Registration form within 30 days after the termination of participation in the subsidy program or a change to a different subsidy program, which shall show the computation of the allowable rent in accordance with § 209 of the Act (D.C. Official Code § 42-3502.09) and § 4203 of this chapter and shall include any supporting documentation of that computation.

4106.12 A rental unit may be exempt under § 205(a)(1) of the Act (D.C. Official Code § 42-3502.05(a)(1)) where the unit is rented to or co-leased by a home and community-based services waiver provider and occupied by a tenant with a disability.

4106.13 A rental unit may be exempt under § 205(a)(2) of the Act (D.C. Official Code § 42-3502.05(a)(2)) (the new construction exemption), where:

(a) The rental unit is:

(1) In a housing accommodation for which the building permit was issued after December 31, 1975; or

(2) Newly created in an addition to a housing accommodation or converted from non-residential space in a housing accommodation, where the addition or conversion was first covered by a Certificate of Occupancy for housing use issued after January 1, 1980; and

(b) If the construction of the new housing accommodation under subparagraph (a)(1) required the demolition of an existing housing accommodation that was covered by the Act, the Registration/Claim of Exemption Form is accompanied by a certification that the number of newly constructed rental units exceeds the number of demolished rental units.

4106.14 A rental unit may be exempt under § 205(a)(3) of the Act (D.C. Official Code § 42-3502.05(a)(3)) (the small landlord exemption) if:

(a) The rental unit for which exemption is claimed meets the requirements of § 4107;

(b) The Registration/Claim of Exemption Form includes the name and street address (not including mailbox services or post office box addresses) of each person having a direct or indirect interest in the rental unit, as defined under § 4107; and

(c) The Registration/Claim of Exemption Form includes the addresses of all other housing accommodations or rental units located in the District of Columbia in which the owners, individually or collectively, have a direct or indirect interest, and the number of rental units in each listed housing accommodation.

4106.15 A rental unit may be exempt under § 205(a)(4) of the Act (D.C. Official Code § 42-3502.05(a)(4)) (the continuous vacancy exemption), where it meets the following requirements:

(a) The housing accommodation was:

(1) Continuously vacant and not subject to a rental agreement during the period beginning on January 1, 1985, and ending on July 17, 1985 (the effective date of the Act); or

(2) Previously exempt under § 206(a)(4) of the Rental Housing Act of 1980; and

(b) The Registration/Claim of Exemption Form is filed prior to re-rental and includes a certification to the Rent Administrator that the housing accommodation fulfills the conditions set forth in subsection (a) and is in substantial compliance with the D.C. Housing Regulations when offered for rent.

4106.16 A rental unit may be exempt under § 205(a)(5) of the Act (D.C. Official Code § 42-3502.05(a)(5)) (the cooperative exemption) if:

(a) The rental unit for which exemption is claimed meets the requirements of § 4108; and

(b) The Registration/Claim of Exemption Form is filed in accordance with § 4107 (the small landlord exemption) and includes the signature of each person having a direct or indirect interest in the proprietary lease or occupancy agreement, as defined under § 4107.

4106.17 A rental unit may be exempt under § 205(a)(7) of the Act (D.C. Official Code § 42-3502.05(a)(7)) if the housing accommodation of which the unit is a part:

(a) Is subject to a building improvement plan under the Apartment Improvement Program administered with grant funds under the Housing

and Community Development Act of 1974 (42 USC §§ 5301 *et seq*.); provided, that the building improvement plan, accompanied by a certification signed by the tenants of seventy percent (70%) of the occupied units of the housing accommodation, is or was filed with the Rent Administrator at the time of execution; or

(b) Receives rehabilitation assistance under a multi-family assistance program of the Department of Housing and Community Development.

4107 SMALL LANDLORD EXEMPTION

4107.1 A rental unit may be exempt from the Rent Stabilization Program pursuant to § 205(a)(3) of the Act (D.C. Official Code § 42-3502.05(a)(3)) (the small landlord exemption) if:

(a) A Registration/Claim of Exemption Form is filed with the Rental Accommodations Division in accordance with §§ 4101, 4102, and 4106 of this chapter; and

(b) The claim of exemption for the rental unit, as filed, meets each requirement of this section.

4107.2 A rental unit may be exempt under this section if the Registration/Claim of Exemption Form shows that:

(a) A total of four (4) or fewer natural persons own or have an interest, directly or indirectly, in the rental unit; and

(b) The four (4) or fewer natural persons listed pursuant to paragraph (a) own or have an interest, directly or indirectly, in a collective total of four (4) or fewer rental units within the District of Columbia.

4107.3 A natural person does not include a partnership, corporation, limited liability company, an estate or revocable, irrevocable, or other trust except as provided by § 4107.4, or any other business association with a separate legal existence.

4107.4 A decedent's estate (or the personal representative thereof) or a testamentary trust that owns or has an interest in a rental unit may claim the small landlord exemption if the unit was validly claimed to be exempt under the decedent's ownership, at the time of his or her death.

4107.5 Notwithstanding § 4102.2, a housing provider that claims the small landlord exemption shall file a single Registration/Claim of Exemption Form that includes all rental units within the District of Columbia that are owned by the landlord or in which the landlord has an interest, directly or indirectly.

4107.6 All persons who own or have an interest, directly or indirectly, in each rental unit for which an exemption is claimed under this section shall be listed on the Registration/Claim of Exemption Form.

4107.7 All rental units within the District of Columbia that are owned by or in which each person listed in accordance with § 4107.6 has an interest, directly or indirectly, shall also be listed on the Registration/Claim of Exemption Form Form.

4107.8 An interest, whether direct or indirect, in a rental unit shall mean ownership, in whole or in part, of the real property that constitutes or contains a rental unit. Membership in a cooperative housing association or ownership of a condominium unit shall not, on its own, be deemed to be an interest in any rental unit other than the unit that the member or owner is entitled to use and occupy.

4107.9 For the purposes of § 4107.8, an indirect interest in a rental unit shall be attributed to a person if:

(a) The rental unit is owned, directly or indirectly, except as provided by § 4107.11, by or for an individual's spouse, other than a spouse who is legally separated from the individual; or

(b) The rental unit is owned, directly or indirectly, by or for:

(1) A partnership, including a limited liability company or S corporation, or an unincorporated association, in which the person, directly or indirectly, has an interest of five percent (5%) or more in either the profits or capital of the partnership or association, whichever proportional interest is greater;

(2) An estate or trust of which the person is a beneficiary who has an actuarial interest of five percent (5%) or more, except as provided by § 4107.13, assuming the maximum exercise of discretion by the fiduciary in favor of the beneficiary, or a trust of which the person is considered the substantial owner under the Internal Revenue Code (26 U.S.C. §§ 671-679); or

(3) A corporation of which the person owns, directly or indirectly, more than five percent (5%) of the total value of the stock in the corporation.

4107.10 For the purposes of § 4107.9, if a person has an option to acquire an ownership or equity interest in a business entity, or an option to acquire an ownership or equity interest in a rental unit not including an option to purchase pursuant to the Rental Conversion and Sale Act of 1980, the interest shall be attributed to the person.

4107.11 For the purposes of § 4107.9(b), a business entity's ownership of a second business entity shall be attributed to an individual with an interest in the first business entity. Sequential attributions of ownership shall be in proportion to the percentage of the owner's interest; except, that any interest greater than fifty percent (50%) of the voting or managing rights in a partnership or corporation shall be attributed as one hundred percent (100%) ownership. For example, if Person A owns ten percent (10%) of the general stock in Corporation B, and Corporation B owns twenty five percent (25%) of the general stock in Corporation C, Person A shall be deemed to have a two and a half percent (2.5%) interest in Corporation C. For further example, if Person A owns 10% of the general stock in Corporation B, and Corporation B owns fifty one percent (51%) of "class A" voting shares of Corporation C, regardless of the total outstanding value of "class B" non-voting shares, Person A shall be deemed to have a ten percent (10%) interest in Corporation C.

4107.12 For the purposes of § 4107.9(b)(2), a beneficiary of an estate or trust who cannot under any circumstances receive any part of an interest held, directly or indirectly, by the estate or trust, including the proceeds from the disposition thereof, or the income therefrom, does not have an actuarial interest in the rental unit. Thus, where an interest held, directly or indirectly, by a decedent's estate has been specifically bequeathed to certain beneficiaries and the remainder of the estate has been specifically bequeathed to other beneficiaries, the interest is attributable only to the beneficiaries to whom it is specifically bequeathed. Similarly, a remainderman of a trust who cannot under any circumstances receive any direct or indirect interest in the rental unit which is a part of the corpus of the trust (including any accumulated income therefrom or the proceeds from a disposition thereof) does not have an actuarial interest in the rental unit. However, an income beneficiary of a trust does have an actuarial interest in the rental unit if he or she has any right to the income from the rental unit, even though under the terms of the trust instrument the direct or indirect interest can never be distributed to him or her.

4107.13 Any rental units listed or required to be listed on a Registration/Claim of Exemption Form filed under this section that are part of a building, structure, or housing accommodation owned by a cooperative housing association shall be subject to § 4108.

4107.14 A rental unit shall not be omitted from a Registration/Claim of Exemption Form filed under this section by reason that it is vacant, unless the housing provider has permanently discontinued rental use of the unit, and, if applicable, the previous tenant of the unit was evicted in compliance with § 501 of the Act (D.C. Official Code § 42-3505.01).

4107.15 A Registration/Claim of Exemption Form filed pursuant to this section shall be amended or refiled whenever required by § 4103. If a change in ownership of any listed rental unit or in the interest(s) of any listed owner would invalidate the claimed exemption, a new Registration/Claim of Exemption Form shall be filed for

each rental unit that was previously claimed as exempt within thirty (30) days of the change.

4107.16 A housing provider shall not claim the small landlord exemption for any rental unit or housing accommodation that was covered by the Rent Stabilization Program prior to the current landlord taking ownership, if the landlord took ownership by one of the means listed in § 402(c)(2) of the Tenant Opportunity to Purchase Act of 1980 (D.C. Official Code § 42-3404.02(c)(2)) ("grandfathered unit"). If a housing provider claims the small landlord exemption for any other rental units, any grandfathered units shall be counted towards the aggregate number of rental units in which any owner has an interest in accordance with § 4107.2, but the grandfathered unit shall be separately registered as covered by the Rent Stabilization Program.

4108 COOPERATIVE EXEMPTION

4108.1 A rental unit may be exempt from the Rent Stabilization Program under § 205(a)(5) of the Act (D.C. Official Code § 42-3502.05(a)(5)) (the cooperative exemption) if:

(a) The building, structure, or housing accommodation of which the rental unit is a part is owned by a cooperative housing association ("co-op building"); and

(b) The housing provider claims this exemption by filing a Registration/Claim of Exemption Form claiming the small landlord exemption in accordance with § 4107; provided, that this section shall apply to each listed unit on the Form that is part of a co-op building.

4108.2 A unit in a co-op building exclusively offered for lease or occupancy to shareholders or members in a cooperative housing association ("exclusive unit") does not need to be registered by the association as a rental unit under this chapter.

4108.3 A rental unit in a co-op building shall not be exempt under this section if it is a non-exclusive unit, in which case the rental unit shall be registered by the association in accordance with this chapter, on a Registration/Claim of Exemption Form listing all non-exclusive units in the co-op building as part of one (1) housing accommodation.

4108.4 A shareholder's or member's stock ownership or membership in a cooperative housing association shall not constitute an interest in any other rental unit in the co-op building as to which the owner or member does not have a proprietary lease or occupancy agreement; provided, that if a co-op building includes any non-exclusive units, each shareholder or member shall be deemed to have an interest in each non-exclusive unit for the purposes of § 4107.

4109 REGISTRATION FEE

4109.1 Each housing provider required to be registered under this chapter shall pay the registration fee established by § 401 of the Act (D.C. Official Code § 42-3504.01) through the Department of Consumer and Regulatory Affairs ("DCRA") in accordance with § 207.1 of this title at the time its housing business license is issued or renewed or as otherwise directed by DCRA.

4109.2 The registration for any housing accommodation or rental unit for which the registration fee is unpaid shall be deemed to be defective in accordance with § 4104.3. If the registration fee is not paid when a housing provider first files a Registration/Claim of Exemption Form and the housing provider receives notice from the Rent Administrator of the defect, the housing provider may timely correct the defect in accordance with §§ 4104.2 and .5. Thereafter, if the registration fee is not paid when required, the housing provider shall be deemed to not have met the registration requirements of this chapter until the fee is paid.

4110 CERTIFICATE OF ASSURANCE

4110.1 The Mayor, at the request of a housing provider, shall issue a Certificate of Assurance pursuant to § 221 of the Act (D.C. Official Code § 42-3502.21), for a housing accommodation exempted under § 205(a)(2) or (4) of the Act (D.C. Official Code §§ 42-3502.05(a)(2) or (4)), for which any building permit has been issued.

4110.2 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 (4) of the Act (D.C. Official Code §§ 42-3502.05(a)(2) or (4)); and

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

4110.3 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.

4110.4 The Rent Administrator shall recommend denial where the Rent Administrator finds that the housing accommodation is not eligible for exemption under § 205(a)(2) or (4) of the Act (D.C. Official Code §§ 42-3502.05(a)(2) or (4)), or that a building permit has not been issued for the subject housing accommodation after May 1, 1985.

4111 DISCLOSURES TO NEW AND CURRENT TENANTS

4111.1 The tenant of any rental unit covered by the Act, as provided by § 4100.3, shall have the right to request, in writing, no more than one time in each calendar year, that the housing provider disclose, within ten (10) business days of the request:

(a) The amount of each rent increase implemented for the rental unit during the preceding three (3) years from the date of the request; and

(b) If the rental unit is covered by the Rent Stabilization Program, for each rent increase disclosed pursuant to paragraph (a):

(1) The type of the rent adjustment that was implemented;

(2) If a vacancy adjustment was implemented pursuant to § 213(a)(2) of the Act (D.C. Official Code § 42-3502.13(a)(2)) prior to the applicability date of the Vacancy Increase Reform Amendment Act of 2018 (D.C. Law 22-223), the identification of the substantially identical rental unit used; and

(3) If prior administrative approval was required for the rent adjustment, the case number of the petition or application and the date on which the approval became final.

4111.2 A housing provider of a rental unit covered by the Act shall maintain records of the following:

(a) For all rental units:

(1) Whether the housing accommodation, or a specific rental unit within the housing accommodation, is covered by the Rent Stabilization Program, including the housing provider's current business license, the current Registration/Claim of Exemption Form that identifies the rental unit and any amendments to the Form;

(2) The ownership information required on the Registration/Claim of Exemption Form for the housing accommodation;

(3) Whether the building of which the rental unit is a part is registered as a condominium or cooperative building or is in the process of converting to condominium or cooperative housing use or to any use that is not a housing accommodation;

(4) The frequency with which rent increases may be implemented pursuant to any lease or, if the rental unit is covered by the Rent Stabilization Program, § 208(g) of the Act (D.C. Official Code § 42-3502.08(g));

(5) The rent;

(6) The amount of:

(a) Any nonrefundable application fee collected or to be charged for the rental unit; and

(b) Any security deposit held or to be demanded, the interest rate on the deposit, and the means and timing by which the security deposit shall be returned to the tenant, in accordance with §§ 308-311 of this title;

(6) Copies of any notices of violations of the Housing Regulations, including the Property Maintenance Code, at the housing accommodation issued by the Department of Consumer and Regulatory Affairs within the past twelve (12) months, or at any time if the violation(s) has not been abated;

(7) Information known or that should have been known about the presence of indoor mold contamination, as defined by § 302(5) of the Air Quality Amendment Act of 2014 (D.C. Official Code § 8-241.01(5)), in the rental unit or common areas of the housing accommodation during the previous three (3) years, unless the mold has been remediated by an indoor mold remediation professional, as defined in § 302(6) of the Air Quality Amendment Act of 2014 (D.C. Official Code § 8-241.01(6)); and

(8) The Tenant Bill of Rights, as published by the Office of the Tenant Advocate; and

(b) In addition, for rental units covered by the Rent Stabilization Program:

(1) Any tenant petition or any petition or application for a rent adjustment, rent surcharge, or adjustment in related services or facilities affecting the rental unit that has been filed and remains pending or which has been approved but not yet implemented;

(2) Any rent surcharges authorized for the rental unit, including conditional rent surcharges currently implemented pursuant to a pending hardship petition under § 212 of the Act (D.C. Official Code § 42-3502.12) and § 4209 of this title, and the expiration date for any rent surcharges currently authorized pursuant to an approved capital improvement petition under § 210 of the Act (D.C. Official Code § 42-3502.10) and § 4210 of this title; and

(3) A pamphlet published by the Rent Administrator that explains in detail using lay terminology the laws and regulations governing the implementation of rent increases and petitions permitted to be filed by housing providers and by tenants.

4111.3 The Rent Administrator shall publish a form that, when properly completed by a housing provider, contains:

(a) A statement that the records described by § 4111.2 are available for inspection by a tenant;

(b) The location of the set of records maintained in accordance with § 4111.4; and

(c) A table of contents enumerating the categories of information contained in the set of records.

4111.4 A copy of the completed form described in § 4111.3 shall be posted in the same location as the Registration/Claim of Exemption Form in accordance with § 4101.6(a).

4111.5 A housing provider of a rental unit covered by the Act shall maintain a continuously-updated compilation of the records described in § 4111.2 for inspection by the tenant in:

(a) A publicly accessible area of the housing accommodation at which the housing provider or an agent is regularly present;

(b) If an area described in paragraph (a) is not available, the nearest business office maintained by the housing provider to the housing accommodation in the District of Columbia; or

(c) If an area described in neither paragraphs (a) nor (b) is available, in Portable Document Format (".pdf" file type) or other common electronic format for transmission to the tenant by electronic mail upon request and for paper delivery to the tenant by U.S. mail upon request.

4111.6 At the time a prospective tenant files an application to lease any rental unit covered by the Act, or, if no application is required, prior to the execution of, or oral agreement to, a lease or rental agreement, the housing provider shall provide the tenant with:

(a) A completed copy of the form described in § 4111.3; and

(b) A copy of each record or the document listed in § 4111.2; provided, that where petitions, forms, or other applications require supporting

documentation such as financial statements, the supporting documentation need not be provided so long as it is made available as required by § 4111.4.

4111.7 The tenant of any rental unit covered by the Act shall have the right to request, no more than once per year, that the housing provider provide, within ten (10) business days of the request and without charge:

(a) A completed copy of the form described in § 4111.3; and

(b) A complete copy of the compilation of the records described in § 4111.2.

4111.8 A housing provider, without regard to whether a rental unit is claimed to be exempt from the Rent Stabilization Program, shall not increase the rent for a rental unit if the housing provider:

(a) Willfully fails to comply with any requirement of this section; or

(b) Fails to comply with any requirement of this section within ten (10) days of any written notice that the housing provider has failed to comply with the requirement.

4111.9 For the purposes of this section, the term "willfully" shall have the same meaning as provided in § 4217.8.

4111.10 The prohibition on rent increases provided by § 4111.7 shall last until sixty (60) days after the housing provider corrects the noncompliance.

4199 DEFINITIONS

4199.1 The provisions of § 3899 of Chapter 38 of this title and the definitions set forth in that chapter shall be applicable to this chapter.

4199.2 The provisions of § 3816 of Chapter 38 of this title shall be applicable to the calculation of any time periods provided by this chapter.

CHAPTER 42: RENT STABILIZATION PROGRAM

SECTION

4200 GENERAL OVERVIEW

4200.1 This chapter implements the Rent Stabilization Program, established by Title II of the Rental Housing Act of 1985 ("Act"), by regulating rent adjustments for covered rental units. The Rent Stabilization Program restricts when rent may be increased and the amount that it may be increased at any one time. Rent may be decreased at any time, or a rent decrease may be required by the Rent Stabilization Program.

4200.2 Prior to August 5, 2006, the Rent Stabilization Program regulated rents primarily by establishing a "rent ceiling" for each covered rental unit and further by limiting increases in the rent charged. Pursuant to the Rent Control Reform Amendment Act of 2006 (D.C. Law 16-145; 53 DCR 6688 (June 23, 2006)), rent ceilings are abolished, except that:

(a) A housing provider may increase the rent for a rental unit by implementing any previously unused adjustment to the rent ceiling of the unit pursuant to a petition or voluntary agreement that was approved by the Rent Administrator prior to, or for which approval was pending on, August 5, 2006; and

(b) Any petition or voluntary agreement for which approval remains pending in any proceeding under the Act shall be decided in accordance with the provisions of the Act and this chapter in effect at the time the proceeding was initiated.

4200.3 The Rent Stabilization Program covers all rental units in the District of Columbia except those rental units that are:

(a) Exempt from the Rent Stabilization Program by § 205(a) of the Act (D.C. Official Code § 42-3502.05(a)) and § 4106 of this title; or

(b) Excluded from the scope of the Act by § 205(e) of the Act (D.C. Official Code § 42-3502.05(e)) and § 4105 of this title.

4200.4 The initial maximum, lawful rent for each rental unit covered by the Rent Stabilization Program shall be the amount established in accordance with §§ 4201, 4202, or 4203, as applicable.

4200.5 The rent charged to a tenant for a covered rental unit shall be filed by the housing provider with the Rental Accommodations Division, and the amount of rent charged on file shall be updated in accordance with § 4204 following any rent adjustment, including when the amount of rent charged is reduced.

4200.6 As provided in § 4205, the rent for a covered rental unit may be increased no more than once every twelve (12) months, except in the case of a vacancy adjustment, and may be increased at any given time by no more than the amount allowed by one (1) authorized basis for rent adjustment provided by the Rent Stabilization Program.

4200.7 The Rent Stabilization Program provides the following types of rent adjustments, which are described in detail in the corresponding sections of this chapter:

(a) For rent adjustments that do not require prior administrative approval:

(1) The annual adjustment of general applicability published by the Commission, based on the consumer price index or Social Security COLA, in § 4206; and

(2) An adjustment upon a vacancy in a rental unit, in § 4207; and

(b) For rent adjustments that require prior administrative approval by petition or application:

(1) Rent surcharges based on claims of hardship, in § 4209;

(2) Rent surcharges based on the cost of capital improvements, in § 4210;

(3) Rent adjustments based on changes in related services or facilities, in § 4211;

(4) Rent surcharges based on substantial rehabilitations, in § 4212; and

(5) Rent adjustments based on voluntary agreements, in § 4213.

4200.8 Each affected tenant shall be notified of and have an opportunity to contest a pending petition or application for approval of a rent adjustment of the types listed in § 4200.7(b), in accordance with § 4208 and the applicable section of this chapter for the type of adjustment requested.

4200.9 A petition or application for a rent adjustment of the types listed in § 4200.7(b) may be contested on the grounds that an affected rental unit or housing accommodation is not in substantial compliance with the Housing Regulations, as provided in § 4216, and shall not be approved unless the non-compliance has been abated at the time of an evidentiary hearing on the petition, except that a substantial rehabilitation surcharge may be approved if it will abate all substantial violations.

4200.10 The rent for a rental unit shall not be increased based on an otherwise-authorized rent adjustment, including a substantial rehabilitation surcharge, if the unit or the housing accommodation of which it is a part is not in substantial compliance with the Housing Regulations, as provided in § 4216, on the effective date of the rent increase.

4200.11 Notice of all rent increases shall be served on the affected tenant and filed with the Rent Administrator, in accordance with § 4205.

4200.12 Authorization for a rent adjustment shall be valid as follows:

(a) Except for vacancy adjustments, authorization shall expire twelve (12) months after either the published effective date of the annual adjustment of general applicability or the date an order of the Rent Administrator or Office of Administrative Hearings approving the adjustment becomes final, as applicable;

(b) A vacancy adjustment shall be implemented only at the time the vacancy occurs, in accordance with § 4205.6;

(c) Failure to implement a rent adjustment within the time allowed shall result in the forfeiture of the authorization for the rent adjustment; and

(d) The prohibition on implementation of multiple rent adjustments within a (12) month period, as provided by § 4200.6, shall not excuse the failure, or extend the allowable time, to implement a rent adjustment.

4200.13 A tenant may contest any rent adjustment for his or her rental unit, or an unauthorized reduction or elimination of related services or facilities, by filing a petition with the Rent Administrator within three (3) years of the effective date of the rent increase or the reduction or elimination of related services or facilities, in accordance with § 4214.

4200.14 If a tenant prevails in a petition filed under § 4214, the tenant may be awarded a refund of rent demanded or received by the housing provider in excess of the lawful rent for the rental unit, and the housing provider may be ordered to reduce the rent going forward (a rent rollback), in accordance with § 4217.

4200.15 When a petition or application before the Rent Administrator requires an evidentiary hearing on the record as provided by this chapter, jurisdiction over the matter shall be transferred to the Office of Administrative Hearings. An appeal from a final order of the Office of Administrative Hearings may be taken with the Commission in accordance with Chapter 38.

4201 BASE RENT AND INITIAL LAWFUL RENT

4201.1 Pursuant to § 103(4) of the Act (D.C. Official Code § 42-3501.03(4)), the "base rent" for each rental unit covered by the Rent Stabilization Program on July 17, 1985, the effective date of the Act, was the rent ceiling for the unit as of April 30, 1985.

4201.2 Pursuant to the Rent Control Reform Amendment Act of 2006 (D.C. Law 16-145; 53 DCR 4889 (June 23, 2006)), the lawful rent for a rental unit covered by the Rent Stabilization Program on August 5, 2006, when rent ceilings were abolished, shall be the amount of rent charged that was lawfully calculated and on file with the Rental Accommodations Division on August 4, 2006.

4201.3 The initial rent that shall be the basis for future rent adjustments for a newly established rental unit that is not exempt from the Rent Stabilization Program shall be the amount of rent charged by the housing provider for the initial leasing period or the first year of tenancy, whichever is shorter.

4201.4 The initial maximum, lawful rent for an existing rental unit that becomes covered by the Rent Stabilization Program by termination of an exclusion or exemption shall be established as follows:

(a) Upon the termination of the rental unit's exclusion from the coverage of the Act by § 205(e) and § 4105 of this title, as provided by § 4202; or

(b) Upon the termination of the rental unit's exemption from the Rent Stabilization Program pursuant to § 205(a) of the Act and § 4106 of this title, including by reason of the housing provider's failure to file a valid Registration/Claim of Exemption Form, as provided by § 4203.

4202 LAWFUL RENT UPON TERMINATION OF EXCLUSION

4202.1 For any rental unit previously excluded from coverage under the Act by § 205(e) of the Act and § 4105 of this title, the initial maximum, lawful rent shall be determined in accordance with this section upon the occurrence of any event that causes the unit to lose its exclusion and come under the provisions of the Act; provided, that the unit is not otherwise exempt from the Rent Stabilization Program pursuant to § 205(a) of the Act and § 4106 of this title.

4202.2 A housing provider of a rental unit previously excluded from coverage of the Act and not claiming an exemption from the Rent Stabilization Program shall file a Registration/Claim of Exemption Form in accordance with § 4101 within thirty (30) days of the event that causes the unit to lose its exclusion. If a tenant occupies the unit at the time the unit loses its exclusion, the Registration/Claim of Exemption Form shall state the amount of rent lawfully determined in accordance with § 4202.3.

4202.3 The initial maximum, lawful rent for a rental unit described in § 4202.1 shall be the amount of rent charged to a tenant for the rental unit during the first month of the rental period in which the unit is occupied following the event which caused the rental unit to lose its exclusion.

4203 LAWFUL RENT UPON TERMINATION OF EXEMPTION

4203.1 For any rental unit previously exempt from the Rent Stabilization Program by § 205(a) of the Act (D.C. Official Code § 42-3502.05(a)) and § 4106 of this title, the initial rent that may be charged shall be determined in accordance with this section upon the occurrence of any event that causes that rental unit to lose its exempt status.

4203.2 A housing provider of a rental unit previously exempt from coverage of the Rent Stabilization Program shall file a Registration/Claim of Exemption Form in accordance with § 4101 within thirty (30) days of the event that causes the unit to lose its exemption. The Registration/Claim of Exemption Form shall state the rent lawfully determined in accordance with this section, unless the applicable determination cannot be made because the unit is vacant. If the unit loses its exemption solely because of the termination of a tenant-specific rent subsidy, the housing provider shall file a properly completed Amended Registration Form as required by § 4106.11.

4203.3 The initial maximum, lawful rent for a rental unit previously exempt from the Rent Stabilization Program by §§ 205(a)(1) or (5) (D.C. Official Code §§ 42-

3502.05(a)(1), (5)) and §§ 4106.9-.10 or 4108 of this title (the government subsidy exemption or the cooperative housing exemption) shall be no greater than:

(a) If the unit is occupied when the exemption terminates, the sum of:

(1) The rent charged on the last date before the unit became exempt; plus

(2) Each annual adjustment of general applicability which was authorized during the period in which the unit was exempt; or

(b) If the unit is vacant when the exemption terminates, either:

(1) One hundred ten percent (110%) of the amount allowable under paragraph (a); or

(2) The rent charged for a specific, substantially identical rental unit in the same housing accommodation, but not greater than one hundred thirty percent (130%) of the amount allowable under paragraph (a).

4203.4 For a rental unit covered by § 4203.3, if neither the Rent Administrator nor the housing provider can produce a record or stamped copy of the original filing stating the rent charged on the date the rental unit became exempt, the maximum, lawful rent on the termination of the exemption shall be no greater than the lowest of:

(a) The amount computed by § 4203.3(a), using most recent rent charged that is on file with the Rent Administrator before the date the unit became exempt;

(b) The Small Area Fair Market Rent published by the United States Department of Housing and Urban Development for the statistical area that includes the District of Columbia, based on unit size and zip code; or

(c) The average rent during the last six (6) consecutive months in which the unit was leased to and occupied by a tenant and exempt from the Rent Stabilization Program.

4203.5 The initial maximum, lawful rent for a rental unit previously exempt from the Rent Stabilization Program by § 205(a)(3) of the Act (D.C. Official Code § 42-3502.05(a)(3)) and § 4107 of this title (the small landlord exemption) shall be no greater than one hundred five percent (105%) of the average rent during the last six (6) consecutive months in which the unit was leased to and occupied by a tenant and exempt from the Rent Stabilization Program.

4203.6 For a rental unit covered by §§ 4203.3, .4, or .5, if the rent charged after the termination of the exemption will be greater than the last rent prior to the

termination of the exemption or than the average rent during the last six (6) consecutive months in which the unit was leased to and occupied by a tenant and exempt from the Rent Stabilization Program, the housing provider shall file a Certificate of Notice of Rent Adjustment in accordance with § 4204.10 at the same time the housing provider registers the unit in accordance with § 4101 and shall implement the rent adjustment in accordance with § 4205.

4203.7 A rental unit that would be exempt from the Rent Stabilization Program pursuant to § 205(a)(2) of the Act (D.C. Official Code § 42-3502.05(a)(2)) and § 4106.12 of this title (the new construction exemption), but is not exempt because it was constructed in place of a demolished housing accommodation that consisted of an equal or greater number of rental units than the new construction and that was covered by the Rent Stabilization Program shall be considered a newly established rental unit in accordance with § 4201.3.

4203.8 The initial maximum, lawful rent for a rental unit for which the rent was previously regulated by a multi-family assistance program of the Department of Housing and Community Development and exempt from the Rent Stabilization Program pursuant to § 205(a)(7) of the Act (D.C. Official Code § 42-3502.05(a)(7)) and § 4106.16 of this title, upon the termination of the assistance program shall be no greater than the last lawful amount of rent pursuant to the assistance program.

4204 AUTHORIZATION AND FILING OF RENT ADJUSTMENTS GENERALLY

4204.1 The rent for a rental unit covered by the Rent Stabilization Program may be increased no more than once every twelve (12) months, and no rent increase shall exceed the dollar amount authorized or required by one (1) valid legal basis provided by the Act and this chapter.

4204.2 The rent for a rental unit may be adjusted by a housing provider pursuant to the following legal bases without prior administrative approval:

(a) By adjustment of general applicability authorized by § 206(b) of the Act (D.C. Official Code § 42-3502.06(b)) and § 4206 of this chapter; or

(b) By vacancy adjustment authorized by § 213 of the Act (D.C. Official Code § 42-3502.13) and § 4207 of this chapter.

4204.3 The rent for a rental unit may be adjusted by a housing provider with prior administrative approval, pursuant to a petition filed with the Rent Administrator by the housing provider in accordance with § 4208, and approved by a final order of the Office of Administrative Hearings, where required, pursuant to the the following legal bases:

(a) For hardship surcharges authorized by §§ 206(c) and 212 of the Act (D.C. Official Code §§ 42-3502.06(c) & 42-3502.12) and § 4209 of this chapter;

(b) For capital improvement surcharges authorized by § 210 of the Act (D.C. Official Code § 42-3502.10) and § 4210 of this chapter;

(c) For adjustments of related services and facilities authorized by § 211 of the Act (D.C. Official Code § 42-3502.11) and § 4211 of this chapter; or

(d) For substantial rehabilitation surcharges authorized by § 214 of the Act (D.C. Official Code § 42-3502.14) and § 4212 of this chapter.

4204.4 The rent for a rental unit may be adjusted pursuant to a seventy percent (70%) Voluntary Agreement authorized by § 215 of the Act (D.C. Official Code § 42-3502.15), with the prior approval of the Rent Administrator or Office of Administrative Hearings pursuant to an application filed in accordance with § 4213 of this chapter.

4204.5 The rent for a rental unit may be adjusted by order of the Office of Administrative Hearings pursuant to a petition filed by one (1) or more tenants under § 216 of the Act (D.C. Official Code § 42-3502.16), for any of the reasons provided in § 4214 of this chapter.

4204.6 An order of the Rent Administrator or Office of Administrative Hearings authorizing, requiring, or denying authorization for a rent adjustment may be appealed to the Commission, pursuant to §§ 202(a)(2) and 216(h) of the Act (D.C. Official Code §§ 42-3502.02(a)(2), 42-3502.16(h)) and § 19(b) of the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code § 2-1831.16(b)), and appeals shall be decided in accordance with Chapter 38 of this title.

4204.7 The rent for a rental unit may be adjusted by or pursuant to an order of any court of competent jurisdiction.

4204.8 In calculating the amount of a rent adjustment that is authorized or limited by the Rent Stabilization Program:

(a) 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;

(b) Any percentage change in rent shall be rounded to one (1) decimal place; and

(c) Any allowable percentage change shall not be calculated by including the amount of any rent surcharge as part of the current or prior rent charged.

4204.9 An authorized rent adjustment, other than a rent ceiling adjustment preserved by § 206(a) of the Act (D.C. Official Code § 42-3502.06(a)), shall be implemented, in compliance with § 4205, in accordance with the following time limits:

(a) Authorization for an adjustment, other than a vacancy adjustment, shall expire twelve (12) months after the date it first becomes authorized by either its publication as the annual adjustment of general applicability or by order of the Rent Administrator or Office of Administrative Hearings approving the adjustment, as applicable;

(b) For the purposes of paragraph (a), a rent increase authorized pursuant to § 4210 (capital improvement), § 4211 (services or facilities), § 4212 (substantial rehabilitation), or § 4213 (voluntary agreement) shall not be deemed first-authorized with respect to a rental unit until the construction or other change(s) to the housing accommodation that form the basis of the approval of the rent increase is completed.

(c) For the purposes of paragraph (a), a rent surcharge that may not be implemented under § 4215 (elderly and disability protections) shall not be deemed first-authorized with respect to a rental unit unless and until:

(1) The tenant waives his or her rights pursuant to § 224(c) of the Act (D.C. Official Code § 42-3502.24(c)) and § 4215.3 of this chapter;

(2) The rental unit is no longer leased to and occupied by a tenant protected by § 4215; or

(3) The Chief Financial Officer of the District of Columbia determines that funds are not available for the tax credit provided by § 224(g) of the Act (D.C. Official Code §42-3502.24(g));

(d) A vacancy adjustment shall be implemented only at the time the housing provider takes possession of the rental unit from the prior tenant, in accordance with § 4205.6(b);

(e) Failure to implement a rent adjustment within the time allowed shall result in the forfeiture of the authorization for the rent adjustment;

(f) The prohibition on implementation of multiple rent adjustments within a (12) month period, as provided by §§ 4205.7 and 4205.8, shall not excuse the failure, or extend the time, to implement a rent adjustment; and

(g) The prohibition on implementation of rent adjustments in excess of the rent established by a lease or rental agreement of a fixed duration in § 208(e) of the Act (D.C. Official Code § 42-3502.08(e)) and § 4204.12 shall permit a housing provider to defer a rent increase pursuant to an approved petition

under § 4209 (hardship), § 4210 (capital improvement), § 4211 (services or facilities), or § 4213 (substantial rehabilitation) beyond the 12-month expiration period until no more than thirty (30) days after the termination of the fixed duration of the lease.

4204.10 A housing provider shall file a Certificate of Notice of Adjustment in Rent Charged no more than thirty (30) days after the effective date of any rent adjustment, as determined in accordance with § 4205.6, whether or not the affected rental unit is occupied. Each certificate shall set forth:

(a) Each rental unit to which the adjustment applies;

(b) If the rent was increased, the type of rent adjustment being implemented and:

(1) For an adjustment of general applicability, the effective date as published by the Commission;

(2) For a vacancy adjustment, the date on which the housing provider regained possession of the rental unit; or

(3) For any rent adjustment that requires prior administrative approval, the date on which approval was obtained, or, for a conditional hardship increase, the date on which the hardship petition was filed, and the case number of the administrative proceeding;

(c) The dollar amount of the rent adjustment and its percentage of the prior rent charged;

(d) The new rent charged for the rental unit and the date on which it became effective; and

(e) The dollar amount of any other rent surcharge currently applied to the rental unit or from which the current tenant is exempt pursuant to § 224(b) or (i) of the Act (D.C. Official Code § 42-3502.24(b) or (i)) and the case number of the administrative proceeding in which each surcharge was approved.

4204.11 If a housing provider does or is required to decrease the rent charged for a rental unit for any reason, including that an elderly tenant or tenant with a disability is protected under § 224 of the Act (D.C. Official Code § 42-3502.24) and § 4215 of this chapter or upon the termination of a rent surcharge, the housing provider shall file a Certificate of Notice of Adjustment in Rent Charged in accordance with § 4204.10.

4204.12 Authorization for a rent adjustment for any reason under this chapter shall not permit a housing provider to demand, receive or charge any rent to a tenant in

excess of any amount that is fixed by a valid, written lease or rental agreement for the term of the lease or rental agreement.

4204.13 Any term(s) in an otherwise-valid lease or rental agreement by which a housing provider demands, receives, or charges any rent, or reserves the right to implement any rent increase, in excess of the amount permitted by the Rent Stabilization Program shall be void to the extent of the excess.

4205 NOTICE AND IMPLEMENTATION OF RENT ADJUSTMENTS

4205.1 If at any time the rent charged to a tenant for a rental unit covered by the Rent Stabilization Program exceeds the maximum rent that is lawfully calculated for the rental unit, or if a rent rollback is ordered by the Rent Administrator, Office of Administrative Hearings, the Commission, or a court, the housing provider shall reduce the amount of rent charged to an amount equal to, or less than, the lawful rent by providing a written notice to the tenant before the next date on which rent is due.

4205.2 The rent for a rental unit shall not be increased prior to the legal authorization for a rent adjustment becoming effective.

4205.3 The rent for a rental unit shall not be increased if the legal authorization for a particular rent adjustment has expired, as provided by § 4204.9.

4205.4 A housing provider shall only increase the rent for a rental unit, except when implementing a vacancy adjustment under § 4207, by taking the following actions:

(a) The housing provider shall provide the tenant of the rental unit not less than thirty (30) days advance written notice of the rent increase, by service in accordance with § 904 of the Act (D.C. Official Code § 42-3509.04), on a Notice to Tenant of Adjustment of Rent Charged form published by the Rent Administrator, in which the following items shall be included:

(1) The type of the adjustment as provided by the Rent Stabilization Program and, as applicable, either:

(A) The effective date of the adjustment of general applicability, as published by the Commission; or

(B) If prior administrative approval is required, the date on which it was obtained and the case number of the administrative proceeding;

(2) The prior rent charged for the rental unit, the dollar amount of the rent adjustment and percentage change from the prior rent charged, and the new rent;

(3) The date upon which the new rent shall be due;

(4) The dollar amount of any other rent surcharge currently applied to the rental unit or from which the current tenant is exempt pursuant to § 224(b) or (i) of the Act (D.C. Official Code §§ 42-3502.24(b) or (i)); and

(5) Notice of:

(A) The maximum percentage increase in rent charged that may be used to calculate a rent adjustment of general applicability in the current year for an elderly tenant or a tenant with a disability ("protected tenant") in accordance with § 4206.7, which shall be set forth in bold, twelve (12)-point font;

(B) The other benefits and protections that apply to protected tenants; and

(C) The standards, including the current qualifying income for exemption from rent surcharges, and procedures by which a tenant may establish protected tenant status as set forth in § 224(d) of the Act (D.C. Official Code § 42-3502.24(d)) and any rules and requirements implemented by the Mayor pursuant to that section.

(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 of the location and availability for inspection of the documents required to be maintained by § 222(b) of the Act (D.C. Official Code § 42-3502.22(b)) and § 4111 of this title; and

(d) After the rent adjustment takes effect, the housing provider, simultaneously with the filing of the information required by § 4204.10, shall file with the Rental Accommodations Division a copy, or a sample copy if multiple rental units are affected, of the Notice to Tenant of Adjustment in Rent Charged 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 any authorization for a rent adjustment under the Rent Stabilization Program, a housing provider shall not increase the rent 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 Housing Regulations, or any substantial noncompliance is the result of tenant neglect or misconduct;

(b) The housing provider has met the registration requirements of Chapter 41 with respect to the housing accommodation and rental unit; and

(c) At least twelve (12) months shall have elapsed since the effective date of any prior rent increase, in accordance with § 4205.7 and except as provided by § 4205.8.

4205.6 The effective date of a rent adjustment shall be deemed to be:

(a) The date upon which the new rent is due, which shall be stated on the Certificate of Notice of Adjustment in Rent Charged filed with the Rental Accommodations Division and the Notice to Tenant of Adjustment of Rent Charged served on the tenant; or

(b) If the rental unit is vacant:

(1) For a vacancy adjustment, the date the housing provider takes possession of the rental unit from the prior tenant; provided that the housing provider files a Notice of Adjustment of Rent Charged within thirty (30) days, in accordance with § 4207.4; or

(2) For any other authorized rent adjustment, on any date elected by the housing provider that is:

(A) More than twelve (12) months after the effective date of a vacancy adjustment, if one was implemented;

(B) Within twelve (12) months of the order approving the rent adjustment; and

(C) Prior to or simultaneous with the commencement of a new tenancy in the rental unit.

4205.7 A housing provider shall not increase the rent for a rental unit if the rent was increased for any reason during the immediately preceding twelve (12) months, except as provided for a vacancy adjustment under § 4205.8.

4205.8 A housing provider may implement a vacancy adjustment pursuant to § 4207 at any time a vacancy occurs, unless the rent for the rental unit was increased pursuant to another vacancy adjustment, or pursuant to an approved or pending hardship petition under to § 4209, within the preceding twelve (12) months.

4206 ANNUAL RENT ADJUSTMENTS OF GENERAL APPLICABILITY

4206.1 An adjustment of general applicability, as provided by § 206(b) of the Act (D.C. Official Code § 42-3502.06(b)), is an authorized increase in the rent charged for a rental unit that is covered by the Rent Stabilization Program, based on the annual inflation rate, that may be implemented in accordance with this section at the election of the housing provider without prior administrative approval.

4206.2 A housing provider may implement an adjustment of general applicability only if twelve (12) months have elapsed since any previous increase in the rent for the affected rental unit, in accordance with § 4205.7.

4206.3 Prior to March 1 of each year, to be effective on May 1 of the same year, the Commission shall certify and publish in the *D.C. Register*:

(a) The percent of the increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers ("CPI-W") for all items for the Washington-Arlington-Alexandria, D.C.-Md.-Va.-W.Va., Core Based Statistical Area, during the previous calendar year and the effective date after which the CPI-W increase may be used to calculate an adjustment of general applicability;

(b) The most recent annual Social Security COLA; and

(c) The maximum percentage increase in rent charged that may be used to calculate an adjustment of general applicability for an elderly tenant or a tenant with a disability ("protected tenant") in accordance with § 4206.7.

4206.4 A housing provider electing to increase the rent for a rental unit pursuant to an adjustment of general applicability shall do so by serving notice on a tenant in accordance with § 4205.4 and filing notice with the Rental Accommodations Division in accordance with § 4204.10.

4206.5 Each notice of a rent adjustment of general applicability shall be served on a tenant in accordance with § 4205.4(a).

4206.6 Except as provided in § 4206.7 the maximum amount of an adjustment of general applicability that a housing provider may be authorized to implement shall be the lesser of:

(a) The current, effective percentage of the CPI-W increase, published by the Commission in accordance with § 4206.3, plus two percent (2%), of the current rent charged; or

(b) Ten percent (10%) of the current rent charged.

4206.7 If a rental unit is leased to and occupied by a protected tenant who has registered for protected status and whose application has not been denied in accordance with §§ 4215.10 - 4215.15, the amount of a rent adjustment of general applicability that a housing provider may be authorized to implement shall be the lowest of:

(a) The current, effective percentage of the CPI-W increase, published by the Commission in accordance with § 4206.3, of the current rent charged;

(b) The current, effective percentage of the Social Security COLA, published by the Commission in accordance with § 4206.3, of the current rent charged; or

(c) Five percent (5%) of the current rent charged.

4206.8 If a tenant's protected status becomes effective, as provided by § 4215.12, within twelve (12) months of an adjustment of general applicability being implemented for the tenant's rental unit, the housing provider shall, by the effective date of the tenant's protected status, implement a rent rollback to the amount that would be permitted if the prior adjustment of general applicability had been limited by § 4206.7.

4207 VACANCY RENT ADJUSTMENTS

4207.1 A vacancy adjustment, authorized by § 213 of the Act (D.C. Official Code § 42-3502.13), is an increase in the maximum, lawful rent that may be demanded from, received from, or charged to a new tenant for a rental unit that may be implemented when the unit becomes vacant.

4207.2 A vacancy adjustment shall be authorized only if a tenant vacates a rental unit:

(a) On the tenant's own initiative; or

(b) Pursuant to a notice to vacate lawfully served on the tenant pursuant to § 501 of the Act (D.C. Official Code § 42-3505.01) and Chapter 43 of this title due to:

(1) Nonpayment of rent;

(2) A violation of an obligation of tenancy; or

(3) Use of the rental unit for an illegal purpose, as determined by a court of competent jurisdiction.

4207.3 Notwithstanding § 4205.7, a housing provider may take an increase in the maximum, lawful rent for a rental unit pursuant to a vacancy adjustment at any time a vacancy occurs, unless the rent for the rental unit was increased pursuant to a

vacancy adjustment or a conditional or final hardship rent surcharge within the preceding twelve (12) months.

4207.4 A vacancy adjustment shall become authorized and shall be deemed effective on the day on which a housing provider retakes possession of the rental unit in accordance with § 4207.2; provided, that the housing provider shall file a Certificate of Notice of Adjustment in Rent Charged with the Rental Accommodations Division within thirty (30) days, in accordance with § 4204.10.

4207.5 The amount of a vacancy adjustment shall be no greater than, at the election of the housing provider, either:

(a) Ten percent (10%) of the rent charged to the previous tenant for the vacated rental unit; or

(b) If the previous tenant occupied the vacated rental unit for more than ten (10) years, twenty percent (20%) of the rent charged to the previous tenant for the unit.

4207.6 A housing provider that does not properly and timely file notice of a vacancy adjustment pursuant to § 4207.4 shall forfeit the vacancy adjustment, and the amount of the adjustment shall not be included in the rent demanded from, received, from, or charged to any subsequent tenant for the rental unit.

4207.7 Prior to or simultaneously with a new tenant entering a lease or other rental agreement for a rental unit for which a vacancy adjustment was implemented, the housing provider shall disclose to the new tenant, on a form published by the Rent Administrator:

(a) The rent at the commencement of the tenancy;

(b) The amount of each rent adjustment for the rental unit during the preceding three (3) years, including the type of rent adjustment and, if implemented prior to the applicability date of the Vacancy Increase Reform Amendment Act of 2018 (D.C. Law 22-223), the identification of any substantially identical rental unit on which a vacancy adjustment was based; and

(c) The amount and percentage of increase over the prior rent charged that is a result of the vacancy adjustment.

4208 RENT ADJUSTMENTS BY HOUSING PROVIDER PETITION

4208.1 A rent adjustment shall not be adjusted pursuant to § 210 (capital improvement), § 211 (services or facilities), § 212 (hardship), or § 214 (substantial rehabilitation) of the Act (D.C. Official Code §§ 42-3502.10, -.11, -.12, or -.14) without prior, written approval following an administrative disposition.

4208.2 A housing provider who seeks approval of a rent adjustment under any section of the Act referenced in § 4208.1 shall file a petition with the Rent Administrator in accordance with § 3901.

4208.3 Each petition for approval of a rent adjustment filed by a housing provider shall be on a form published by the Rent Administrator and contain all information required by § 4209 (hardship), § 4210 (capital improvement), § 4211 (services or facilities), or § 4212 (substantial rehabilitation), as applicable.

4208.4 Each housing provider petition form published by the Rent Administrator shall include a brief explanation of the purpose of the petition and that the tenant(s) of the affected rental unit(s) have the opportunity to contest the petition.

4208.5 Within five (5) days of the receipt of a petition for a rent adjustment, the Rent Administrator shall make a preliminary determination that the petition complies with all applicable filing requirements for the type of petition.

4208.6 If the Rent Administrator determines that a petition filed by a housing provider does not comply with all applicable filing requirements, the Rent Administrator, in his or her discretion, shall either:

(a) Dismiss the petition without prejudice; or

(b) Grant the housing provider leave to amend the petition, in which case the petition shall be deemed filed on the date it is amended.

4208.7 If the Rent Administrator determines that a petition has been properly filed by a housing provider, he or she shall:

(a) Transmit the petition and all other documents related to the petition to the Office of Administrative Hearings within ten (10) business days;

(b) If it is a hardship petition, prepare an audit report and proposed order in accordance with §§ 4209.29 – 4209.36, and if exceptions and objections are filed to the audit report or proposed order, transmit the petition, the audit report, the proposed order, and all other documents related to the petition to the Office of Administrative Hearings; or

(c) If it is a substantial rehabilitation petition and all affected units are vacant, review the petition and supporting documentation in accordance with §§ 4212.22 – 4212.23 and issue a final order approving or disapproving the petition.

4208.8 The Rent Administrator shall transmit the Registration/Claim of Exemption Form for the affected housing accommodation and a copy of each registration form for status as an elderly tenant or a tenant with a disability, whether or not a claim of

qualifying income has been made, that has been filed and not administratively denied, for any current tenant of the housing accommodation to the Office of Administrative Hearings at the same time he or she transmits a housing provider's petition.

4208.9 Notice that a case has been opened at the Office of Administrative Hearings on a housing provider's petition shall be provided in accordance with 1 DCMR § 2923 and shall include a form, published by the Rent Administrator, notifying tenants of the opportunity to establish an exemption from a rent surcharge or other rent adjustment pursuant to § 224(b) or (i) of the Act (D.C. Official Code § 42-3502.24(b) or (i)) and the standards, including the current qualifying income for exemption from rent surcharges, and procedures by which a tenant may establish protected tenant status as set forth in § 224(d) of the Act (D.C. Official Code § 42-3502.24(d)) and any rules and requirements implemented by the Mayor pursuant to that section.

4208.10 The tenant of each rental unit affected by a housing provider's petition, or a tenant association representing an affected tenant, shall have the opportunity to appear before the Office of Administrative Hearings to contest the petition on any relevant issues.

4208.11 If no tenant or tenant association appears before the Office of Administrative Hearings to contest a housing provider's petition, the petition shall be adjudicated by an Administrative Law Judge on the merits based on evidence produced by the housing provider.

4208.12 Notwithstanding §§ 4208.10 and 4208.11, a tenant or tenant association shall have the opportunity to contest a hardship petition only if the tenant or tenant association files exceptions and objections to the proposed order issued by the Rent Administrator, in accordance with § 4209.33, and no adjudication by the Office of Administrative Hearings shall be required for a hardship petition to which no exceptions and objections have been filed.

4208.13 A petition shall be adjudicated before the Office of Administrative Hearings in accordance with 1 DCMR Chapter 28 and 1 DCMR §§ 2920-2941, and the housing provider shall bear the burden of proving its entitlement to the rent adjustment for which it has filed a petition with regard to each issue.

4208.14 A final order of the Office of Administrative Hearings approving or denying a petition, in whole or in part, may, within ten (10) business days of its service, be appealed to the Commission in accordance with § 3802 by any person that appeared personally or otherwise as a party in the case and that is aggrieved by the final order. In accordance with § 3805, a housing provider shall not implement a rent adjustment authorized by a final order while an appeal of that order is pending before the Commission.

4208.15 A rent adjustment authorized by a final order approving, a petition filed under this section, in whole or in part, shall be implemented in accordance with § 4205 and the applicable section of this chapter for the type of the approved petition.

4208.16 A tenant of an affected rental unit who receives notice of a petition under § 4208.9 and who fails to contest the housing provider's petition shall not at a later date contest or challenge, by tenant petition under § 4214, the basis of an order of the Rent Administrator or Office of Administrative Hearings approving the housing provider's petition, except as provided in § 4214.6; provided, that the tenant may challenge the implementation of the rent adjustment under § 4214.4.

4209 PETITIONS BASED ON CLAIM OF HARDSHIP

4209.1 A housing provider that elects not to implement the rent adjustment of general applicability under § 206(b) of the Act in a particular year may petition the Rent Administrator once during the year for a rent adjustment authorized by §§ 206(c) and 212 of the Act (D.C. Official Code §§ 42-3502.06(c) & 42-3502.12) ("hardship petition"), which shall be in the form of a rent surcharge to increase the housing provider's rate of return.

4209.2 The total dollar amount of all rent surcharges requested in or allowed by a hardship petition shall be no more than the amount necessary to increase the housing provider's rate of return for the housing accommodation to twelve percent (12%), as computed in accordance with § 4209.8. The total dollar amount shall be divided between all rental units in the housing accommodation so that the rent surcharge for each unit shall be an equal percent of the rent charged.

4209.3 A housing provider shall be eligible to file a hardship petition if:

(a) Twelve (12) months have elapsed since the filing of any prior hardship petition for the housing accommodation; and

(b) Nine (9) months have elapsed since the implementation of any rent increase, including a conditional surcharge under this section, for any rental unit in the housing accommodation.

4209.4 The owner of a housing accommodation situated on property that has been determined to be abandoned or a continuing nuisance to the immediate surrounding area shall not be eligible to file a hardship petition for that housing accommodation.

4209.5 A housing provider shall file a hardship petition on a form approved by the Rent Administrator ("Hardship Petition Form"). The submitted Hardship Petition Form shall include the required financial information in the same manner as apartment income and expense reports submitted to the Office of Tax and Revenue.

4209.6 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 percentage of the rent charged for all rental units that shall be used to calculate the amount of the rent surcharge; and

(e) The dollar amount of the rent surcharge that will be applied to each rental unit in the housing accommodation.

4209.7 The accounting method used to calculate the rate of return in a hardship petition shall be cash basis method, irrespective of the method used by the housing provider to file income taxes with the D.C. Office of Tax and Revenue.

4209.8 The rate of return for a housing accommodation shall be the quotient, expressed as a percentage, of:

(a) The net income of the housing accommodation, in accordance with § 4209.9; divided by

(b) The housing provider's equity in the housing accommodation, in accordance with § 4209.20.

4209.9 The net income of a housing accommodation shall be computed for a period of twelve (12) consecutive months within the fifteen (15) months immediately preceding the filing of a hardship petition ("Reporting Period") and shall be the difference between:

(a) The sum of:

(1) The maximum possible rental income for the housing accommodation, in accordance with § 4209.10; plus

(2) The maximum amount of other income which can be derived from the housing accommodation, in accordance with § 4209.11; minus

(b) The sum of:

(1) The operating expenses, in accordance with §§ 4209.12 and .13;

(2) The management fee, if applicable, in accordance with § 4209.14;

(3) Property taxes, in accordance with § 4209.15;

(4) Depreciation expenses, in accordance with § 4209.16;

(5) Vacancy losses, in accordance with § 4209.17;

(6) Uncollected rent, in accordance with § 4209.18; plus

(7) Interest payments, in accordance with § 4209.19.

4209.10 The maximum possible rental income for a housing accommodation shall be the sum of the following for all rental units, including those occupied by employees of the housing provider, for each month in the Reporting Period:

(a) The rents charged as lawfully calculated and filed with the Rental Accommodations Division during the reporting period, plus the total amount of any authorized rent surcharges, whether or not actually demanded or received for any reason, including:

(1) Vacancies;

(2) Use of rental units for the housing provider's business purposes;

(3) Exemptions for elderly tenants or tenants with a disability under § 4215; or

(4) Non-payment of rents;

(b) The unimplemented amount of any rent ceiling adjustments preserved by § 206(a) of the Act; and

(c) Any unimplemented rent adjustments of general applicability that were available but not taken by the housing provider during the three (3) years prior to the Reporting Period.

4209.11 The maximum amount of other income which can be derived from a housing accommodation during the Reporting Period shall be the sum of all income other than rent that:

(a) Is actually derived from the housing provider's interest in the housing accommodation, including, but not limited to, fees, commissions, income from vending machines, income from laundry facilities, and income from parking and recreational facilities; and

(b) Can be derived from the housing provider's interest in the housing accommodation, if such amounts can be reasonably determined, including, for example, fees for unused parking spaces and recreational facilities.

4209.12 Except as provided by § 4209.13, the operating expenses of a housing accommodation shall be the expenses required for the operation of the housing accommodation for the Reporting Period, 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; provided, that any expense that is capital in nature shall be amortized or depreciated using the straight-line method over the useful life of the expensed asset.

4209.13 The operating expenses of a housing accommodation shall not include:

(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 or litigation related to actions brought by the District of Columbia government due to the housing provider's repeated failure to comply with applicable provisions of the Housing Regulations as evidenced by violation notices issued by the Department of Consumer and Regulatory Affairs; or

(h) Any expenses for which a tenant has lawfully paid directly.

4209.14 The management fee of a housing accommodation shall be the amount paid to a managing agent and any pro-rated salaries of off-site employees paid by the housing provider during the Reporting Period, to the extent the duties of the employees are connected with the operation of the housing accommodation, but shall not be more than six percent (6%) of the maximum possible rental income, in accordance with § 4209.10, unless the housing provider shows that of all or part of the excess over six percent (6%) is reasonable in the circumstances.

4209.15 The property taxes for a housing accommodation shall be the amount levied by the District government for real property tax on the housing accommodation during the Reporting Period or, if the Reporting Period includes multiple tax years, the pro-rated portion of the real property tax for each tax year within the Reporting Period.

4209.16 The depreciation expenses for a housing accommodation shall be any depreciation expenses reflected in decreased real property tax assessments for the housing accommodation, in accordance with § 4209.15.

4209.17 The vacancy losses for a housing accommodation shall be the total of the maximum, lawful rents for each vacant rental in the housing accommodation that was actively offered for rent during the Reporting Period, as properly filed with the Rental Accommodations Division, during the Reporting Period; provided, that:

(a) No amount shall be included as a vacancy loss for units occupied by a housing provider or his or her employees or otherwise not offered for rent; and

(b) The total amount of the vacancy losses shall not be more than six percent (6%) of the maximum possible rental income of the housing accommodation, in accordance with § 4209.10, except for good cause shown.

4209.18 The uncollected rent for a housing accommodation shall be any amount of rent or other income which can be derived from the housing accommodation that has been lawfully demanded from a tenant thirty (30) days or more prior to the filing of a hardship petition but not received; provided that a housing provider shall file notice with the Rent Administrator or Office of Administrative Hearings if, at any time prior to the issuance of a final order on the hardship petition, any amount claimed as uncollected rent is received.

4209.19 The interest payments for a housing accommodation shall be the amount of interest paid during the Reporting Period on a mortgage or deed of trust on the housing accommodation; provided, that the interest rate on the mortgage or deed of trust is commercially reasonable.

4209.20 A housing provider's equity in a housing accommodation shall be the difference between:

(a) The assessed value of the housing accommodation, in accordance with § 4209.21; minus

(b) The total value of all encumbrances on the housing accommodation, in accordance with § 4209.22.

4209.21 The assessed value of a housing accommodation shall be the official assessment of the property by the District government during the Reporting Period or if the Reporting Period includes multiple tax years, the weighted average of the assessed value for each tax year within the Reporting Period.

4209.22 The total value of all encumbrances on a housing accommodation shall include all mortgages, liens, trusts, and secured claims, whether incurred for or directly related to the purchase, the capital improvement, the substantial rehabilitation of the housing accommodation, or any other financing for the housing provider or another person.

4209.23 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 and that no encumbrance has been removed temporarily or refinanced, shifted, or otherwise concealed so as to increase the housing provider's apparent equity in the housing accommodation and thereby lower the apparent rate of return on the housing accommodation.

4209.24 The Rent Administrator or the Office of Administrative Hearings may require the housing provider to submit verification of the present or historical status of any encumbrances on the property, and shall require verification of the status of encumbrances if there has been any change in the ownership of the housing accommodation, or the ownership of any business entity with an ownership interest in the housing accommodation, within the three (3) years preceding the filing of the hardship petition.

4209.25 A Hardship Petition Form, as filed with Rent Administrator, shall be accompanied by external financial documents to substantiate the income and operating expense schedule of the housing accommodation. The documents shall include the following:

(a) Copies of bills, invoices, statements, or other requests for payment related to the housing accommodation paid during the Reporting Period;

(b) Copies of cancelled checks or other records of electronic transfers for the housing accommodation during the Reporting Period;

(c) Copies of bank statements for the housing providers;

(d) Copies of ledgers, journals, or other internally generated records of the financial transactions of the housing accommodation during the Reporting Period; and

(e) A worksheet in Microsoft Excel or compatible format showing the expenses paid during the Reporting Period that are substantiated by the accompanying documents.

4209.26 Any expense or other deduction listed in § 4209.9(b) shall be disallowed from the calculation of a housing provider's net income and rate of return if the housing provider does not prove its entitlement to the deduction by a preponderance of the evidence on the record.

4209.27 At the time a hardship petition is filed, unless filing electronically through the internet-accessible database pursuant to § 3901.11, the housing provider shall submit the following with the Rent Administrator:

(a) Two (2) copies of the Hardship Petition Form and the financial information required by § 4209.25;

(b) Envelopes addressed to the tenant(s) of each rental unit by name for each affected rental unit in the housing accommodation with pre-paid first class postage;

(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.

4209.28 After determining, in accordance with § 4208.5, that a hardship petition has been properly filed, the Rent Administrator shall mail notice to each affected rental unit that the petition is under review including:

(a) A copy of the Hardship Petition Form filed by the housing provider;

(b) Notice that the tenants will have the right to contest or oppose the petition by filing exceptions and objections, individually or through a tenant association, and that the housing provider shall have the right to support or defend the petition before the Office of Administrative Hearings as provided by §§ 4208.10 – 4208.16;

(c) A copy of the form published by the Rent Administrator regarding exemptions from rent surcharges as described in § 4208.10;

(d) A statement that a conditional rent surcharge may be implemented in accordance with § 4209.36.

4209.29 The Rent Administrator shall promptly and without cost make all supporting documentation for a hardship petition available in electronic format to any tenant of the affected housing accommodation or any person acting on behalf of a tenant.

4209.30 Within thirty (30) days of the filing of the hardship petition, the Rent Administrator shall issue an audit report, prepared by a Certified Public Accountant, on the

hardship petition and the supporting documentation filed in accordance with § 4209.25 ("Audit Report") and a proposed order that shall state whether the Audit Report supports the approval of the hardship petition, in whole or in part, and the amount of the rent surcharge for each affected rental unit that would be authorized ("Proposed Order").

4209.31 Prior to the issuance of an Audit Report and Proposed Order, the Rent Administrator shall issue an order staying or extending the time before a conditional rent surcharge may be implemented in accordance with § 4209.36 if the Rent Administrator determines that:

(a) The housing provider has failed to comply with the requirements of this section regarding the completion of the Hardship Petition Form or submission of supporting documentation; or

(b) Further supporting documentation is necessary to review the validity of the rate of return claimed in the hardship petition.

4209.32 If the Rent Administrator has issued a stay or extension order pursuant to § 4209.31 and the housing provider continuously fails to comply with the requirements of that order, the Rent Administrator may dismiss the hardship petition.

4209.33 The Rent Administrator shall serve the housing provider and each affected tenant with the Audit Report and Proposed Order in the same manner and including the same information provided by § 4209.28, and the housing provider and each affected tenant, or a tenant association representing affected tenants, shall have thirty (30) days to file exceptions and objections to the Audit Report or Proposed Order in accordance with § 4209.35.

4209.34 If no party files exceptions and objections to the Audit Report or Proposed Order within the time provided by § 4209.33, the Proposed Order shall become final. If exceptions and objections are filed, the housing provider and each tenant or tenant association that has filed exceptions and objections, shall have the right to a hearing before the Office of Administrative Hearings on the contested issues.

4209.35 Exceptions and objections filed pursuant to § 4209.33 may contest whether a hardship petition should be approved or denied, in whole or in part, based on the following issues:

(a) The accuracy and verifiability of the income and expense/deduction data used to calculate the net income of the housing accommodation;

(b) The accuracy and verifiability of the financial information used to show the assessed value and encumbrances of the housing accommodation;

(c) The accuracy of the calculations made by the housing provider in completing the Hardship Petition Form or the Rent Administrator in completing the Audit Report;

(d) Whether any operating expense is extraordinary and should therefore be excluded or capital in nature and should therefore be amortized or depreciated over its useful life;

(e) If the hardship petition requests to implement rent surcharges for any rental units by different percentages of the current rent charged, whether good cause exists for the different treatment;

(f) The existence of a valid registration statement or business license for the housing accommodation;

(g) Whether, as provided by § 4216.4, substantial violations of the Housing Regulations existed on the date the hardship petition was filed and have not been abated on the date of a hearing on the hardship petition;

(h) Whether the hardship petition was filed as a retaliatory action prohibited by § 502 of the Act (D.C. Official Code § 42-3505.02) and § 4303 of this title; or

(i) Any other violation of the requirements provided by §§ 206(c) or 212 of the Act (D.C. Official Code §§ 42-3502.06(c) or 42-3502.12) or this section.

4209.36 After exceptions and objections have been filed and a hardship petition transferred to the Office of Administrative Hearings, the Administrative Law Judge may issue an order containing findings of fact or conclusions of law as to any issue of error identified by the parties or Administrative Law Judge with respect to the Audit Report and remanding the hardship petition to the Rent Administrator for a revised Audit Report.

4209.37 Within ninety (90) days of the filing of a hardship petition that claims a negative net income in accordance with § 4209.9, if the Office of Administrative Hearings has not issued a final order approving or denying the hardship petition, in whole or in part, or if such an order is stayed by an appeal to the Commission or the District of Columbia Court of Appeals, the housing provider may implement a conditional rent surcharge for each affected rental unit; provided, that any extension of time ordered pursuant to § 4209.31 shall be added to the number of days after which the housing provider may implement the conditional rent surcharge.

4209.38 A conditional rent surcharge authorized by § 4209.37 shall be no greater than the lesser of:

(a) Five percent (5%) of the rent charged for an affected rental unit; or

(b) The amount authorized by a provisional order issued under § 4209.39.

4209.39 If a hearing has been held on a hardship petition by the Office of Administrative Hearings, the Administrative Law Judge may issue a provisional order approving or denying the petition, in whole or in part, no less than ten (10) days before the expiration of time under § 4209.37; provided, that the Administrative Law Judge may issue an order extending the time provided by § 4209.37 if he or she determines that the housing provider is responsible for any unreasonable delay in holding a hearing.

4209.40 A conditional rent surcharge pursuant § 4209.37, if allowed, shall be implemented in accordance with §§ 4205.4 and 4205.5, and copies of the sample notice of rent increase and affidavit of service required by § 4205.4(d) shall be transmitted by the Rental Accommodations Division to the Office of Administrative Hearings and entered into the record of the pending hardship petition.

4209.41 A tenant may contest the implementation of a conditional rent surcharge under § 4209.37, but not the merits of the related, pending hardship petition, by filing a separate tenant petition with the Rent Administrator pursuant to § 4214. In the discretion of the Office of Administrative Hearings, a tenant petition on a conditional surcharge and the related, pending hardship petition may be consolidated or separately adjudicated in order to provide expedited resolution regarding the current rents charged in the housing accommodation.

4209.42 If a conditional rent surcharge has been implemented pursuant to § 4209.37, and a final order of the Rent Administrator, the Office of Administrative Hearings, or a decision by the Commission in an appeal approves only in part or denies the related hardship petition, the housing provider shall immediately implement a rent rollback in the amount by which the conditional surcharge exceeds the approved amount, if any, of the hardship petition, and the housing provider shall, within twenty one (21) days, refund to each affected tenant any excess rent demanded, received, or charged while the hardship petition has been pending, unless a tenant elects in writing within fourteen (14) days to receive the balance owed as a rent credit. Any agreement to receive a rent credit shall contain an express, written, knowing waiver of the right to receive a rent refund. A final order approving in part or denying a hardship petition shall constitute a final order to pay any rent refund and implement any rent rollback required by this section.

4209.43 Any rent surcharge that is authorized by a final order approving a hardship petition shall be implemented in accordance with § 4205 within twelve (12) months of the date on which the order becomes final, including the exhaustion of any rights of appeal, but no earlier than twelve (12) months following any prior rent increase for an affected rental unit, other than a conditional increase pursuant to this section. Failure to implement the rent adjustment within twelve (12) months will result in the authorization for adjustment being forfeited in accordance with § 4204.9(e).

4210 PETITIONS BASED ON CAPITAL IMPROVEMENTS

4210.1 A housing provider may petition the Rent Administrator for a rent adjustment under § 210 of the Act (D.C. Official Code § 42-3502.10) ("capital improvement petition"), which shall be in the form of a temporary rent surcharge, to recover the cost of a capital improvement made to a housing accommodation.

4210.2 The cost of a capital improvement may be recovered through a rent surcharge if the improvement is:

(a) Made to enhance the quality of the housing accommodation ("quality improvement") by:

(1) Protecting or enhancing the health, safety, and security of the tenants or the habitability of the housing accommodation or affected rental units; or

(2) Producing a net saving in the use of energy by the housing accommodation or complying with applicable environmental protection regulations; provided, that any savings in energy costs are passed on to the tenants; or

(b) Required by any federal or local statute or regulation becoming effective after October 30, 1980 ("mandatory improvement").

4210.3 The cost of a capital improvement may not be recovered through a rent surcharge under this section if the improvement is not depreciable under the Internal Revenue Code (26 USC).

4210.4 Except as provided in § 4210.5, the cost of a capital improvement shall not be recoverable through a rent surcharge under this section if a housing provider makes, or begins construction or other work to make, the improvement to a rental unit or a housing accommodation prior to the approval of a capital improvement petition.

4210.5 A housing provider that makes, or begins construction or other work to make, a capital improvement without prior approval of a capital improvement petition may recover the cost of the improvement under this section, following the approval of the petition, if:

(a) The Office of Administrative Hearings has not issued a final order approving or denying the capital improvement petition, in whole or in part, or such an order is stayed pending an appeal to the Commission or the District of Columbia Court of Appeals, within sixty (60) days of the filing of petition; or

(b) The capital improvement is immediately necessary to maintain the health or safety of the tenants or is a mandatory improvement in accordance with § 4210.2(b); provided, that the petition shall be filed no later than thirty (30) days after the completion of all work to make the capital improvement.

4210.6 The cost of a capital improvement shall not be recoverable through a rent surcharge under this section if a tenant is displaced by construction or other work to make the improvement and the housing provider does not comply with § 501(f) of the Act (D.C. Official Code § 42-3505.01(f)) or Chapter 43 of this title or if the tenant has not expressly waived those rights and relocation assistance in a written agreement for alternative housing and assistance.

4210.7 A housing provider shall file a capital improvement petition on a form approved by the Rent Administrator ("Capital Improvement Form"), which shall set forth the following:

(a) Whether, in accordance with § 4210.2, the improvement is a quality improvement to protect or enhance health, safety, and security or to produce a net savings in energy, or a mandatory improvement;

(b) If the improvement is a mandatory improvement, the provision of federal or District law, and its effective date, that requires the improvement;

(c) That the required governmental permits that have been requested or obtained, copies of which shall accompany the Capital Improvement Form;

(d) The basis under the Internal Revenue Code (26 USC) for considering the improvement to be depreciable; and

(e) The dollar amounts, percentages, and time periods computed by following the instructions listed in § 4210.8.

4210.8 The Capital Improvement Form shall contain instructions for computing the following in accordance within this section:

(a) The total cost of a capital improvement;

(b) The dollar amount of the rent surcharge for each rental unit in the housing accommodation and the percentage increase above the current rents charged;

(c) The tax credits allowed in lieu of rent surcharges on elderly tenants and tenants with a disability and any reduced rent surcharges that may be allowed on those tenants; and

(d) The duration of the rent surcharge and its pro-rated amount in the month of the expiration of the surcharge.

4210.9 The total cost of a capital improvement shall be the sum of:

(a) Any costs actually incurred, to be incurred, or estimated to be incurred to make the improvement, in accordance with § 4210.11;

(b) Any interest that shall accrue on a loan taken by the housing provider to make the improvement, in accordance with § 4210.12; plus

(c) Any service charges incurred or to be incurred by the housing provider in connection with a loan taken by the housing provider to make the improvement, in accordance with § 4210.13.

4210.10 For the purposes of calculating interest and service charges, "a loan taken by the housing provider to make the improvement or renovation" shall mean only the portion of any loan that is specifically attributable to the costs incurred to make the improvement or renovation, in accordance with § 4210.11, and the dollar amount of that portion shall not exceed the amount of those costs.

4210.11 The costs incurred to make a capital improvement shall be determined based on invoices, receipts, bids, quotes, work orders, loan documents or a commitment to make a loan, or other evidence of costs as the Administrative Law Judge may find probative of the actual, commercially reasonable costs.

4210.12 The interest on a loan taken to make a capital improvement shall mean all compensation paid by the housing provider to a lender for the use or detention of money used to make a capital improvement over the amortization period of the loan, in the amount of either:

(a) The interest payable by the housing provider at a commercially reasonable fixed or variable rate of interest on a loan of money used to make the capital improvement or on that portion of a multi-purpose loan of money used to make 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 other evidence of interest as the Administrative Law Judge may find probative; 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 over a seven (7) year period:

(1) The 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; plus

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

4210.13 For the purposes of § 4210.12(a), if a housing provider has obtained a loan with a variable rate of interest, the total interest payable shall be calculated using the initial rate of the loan. If the interest rate changes over the duration of the rent surcharge, any certificate filed pursuant to § 4210.29 shall list all changes and recalculate the total interest on the loan.

4210.14 The service charges in connection with a loan taken to make a capital improvement shall include points, loan origination and loan processing fees, trustee's 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 other charges (other than interest) required by a lender, as supported by the relevant portion of a bona fide loan commitment or agreement with a lender, or by other evidence of service charges as the Administrative Law Judge may find probative.

4210.15 The dollar amount of a rent surcharge on a rental unit that a housing provider may implement pursuant to a final order approving a capital improvement petition shall be no more per month than the following:

(a) If a quality improvement affects all rental units in the housing accommodation, the lesser of the amount computed in accordance with § 4210.16 or twenty percent (20%) of the rent charged, as lawfully calculated and properly filed with the Rental Accommodations Division, for each affected rental unit on the date the petition is filed;

(b) If a quality improvement affects fewer than all rental units in the housing accommodation, the lesser of the amount computed in § 4210.17 or fifteen percent (15%) of the rent charged, as lawfully calculated and properly filed with the Rental Accommodations Division, for each affected rental unit on the date the petition is filed; or

(c) If an improvement is a mandatory improvement, the amount computed in accordance with § 4210.18.

4210.16 Except where the amount of a rent surcharge on a rental unit is limited to the percentage specified by § 4210.15(a), the monthly amount of a rent surcharge for each affected rental unit for a quality improvement that affects all rental units in a housing accommodation shall be the quotient of:

(a) The total cost of the capital improvement, in accordance with § 4210.9, divided by ninety-six (96) months; divided by

(b) The number of rental units in the housing accommodation.

4210.17 Except where the amount of a rent surcharge on a rental unit is limited to the percentage specified by § 4210.15(b), the monthly amount of a rent surcharge for each affected rental unit for a quality improvement that affects fewer than all rental units in a housing accommodation shall be the quotient of:

(a) The total cost of the capital improvement, in accordance with § 4210.9, divided by sixty-four (64) months; divided by

(b) The number of rental units affected by the improvement.

4210.18 The monthly amount of a rent surcharge for each affected rental unit for a mandatory improvement shall be the quotient of:

(a) The total cost of the capital improvement, in accordance with § 4210.9, divided by the number of months in the useful life of the improvement; divided by

(b) The number of rental units affected by the improvement.

4210.19 The monthly amount of a rent surcharge requested or allowed by a capital improvement petition shall be an equal amount for each affected rental unit, except where the amount of a rent surcharge on a rental unit is limited to the percentage specified by § 4210.15(a) or (b) or where the implementation of a rent surcharge is prohibited by § 224(b) of the Act (D.C. Official Code § 42-3502.24(b)) and § 4215 of this chapter.

4210.20 Except when a continuation is permitted in accordance with § 4210.28, the duration of a rent surcharge requested or allowed by a capital improvement petition shall be the quotient, rounded to the next whole number of months, of:

(a) The total cost of the capital improvement, in accordance with § 4210.9; divided by

(b) The sum of the monthly rent surcharges permitted by § 4210.15 on each affected rental unit, without regard to whether implementation of the surcharge is prohibited by § 4215.

4210.21 A rent surcharge in the final month of its duration shall be no greater than the remainder of the calculation in § 4210.20, prior to rounding.

4210.22 A Capital Improvement Form, as filed with the Rent Administrator, shall be accompanied by external documents to substantiate the total cost of a capital improvement. A housing provider that has filed a capital improvement petition shall have a continuing obligation to supplement the record of the administrative proceedings on the petition with any new documentation reflecting the actual total cost of the improvement, until a final order approves or denies the petition or the evidentiary record of a hearing closes.

4210.23 A Capital Improvement Form, as filed with the Rent Administrator, shall be accompanied by a listing of each rental unit in the housing accommodation, which shall identify:

(a) Which rental units are to be affected by the capital improvement;

(b) The rent charged for each affected rental unit, as lawfully calculated and properly filed with the Rental Accommodations Division, and any other approved rent surcharges; and

(c) The dollar amount of the proposed rent surcharge for each rental unit and the percentage by which each surcharge exceeds the current rents charged.

4210.24 After determining, in accordance with § 4208.5, that a capital improvement petition has been properly filed, the Rent Administrator shall transmit the petition to the Office of Administrative Hearings within ten (10) business days.

4210.25 A tenant or tenant association that appears pursuant to § 4208.10 may contest whether the capital improvement petition should be approved or denied, in whole or in part, based on the following issues:

(a) Whether the improvement qualifies as a quality or mandatory improvement or is depreciable under the Internal Revenue Code (26 USC);

(b) Whether the improvement affects all or fewer than all rental units in the housing accommodation;

(c) If the improvement affects fewer than all rental units in the housing accommodation, whether the interests of the affected tenants are being protected;

(d) Whether the housing provider has obtained all required District government permits by the time of an evidentiary hearing; provided, that the grounds for any agency's issuance or denial of a required permit shall not be contested;

(e) The accuracy of the financial documentation or if the documentation substantiates the total cost of the capital improvement;

(f) The calculations made by the housing provider or the Rent Administrator in determining the amount and duration of the surcharge;

(g) Whether the housing accommodation is properly registered and the housing provider has all required business licenses;

(h) Whether, as provided by § 4216.4, substantial violations of the Housing Regulations existed on the date the capital improvement petition was filed and have not been abated on the date of a hearing on the capital improvement petition;

(i) Whether the capital improvement petition was filed as a retaliatory action prohibited by § 502 of the Act (D.C. Official Code § 42-3505.02) and § 4303 of this title; or

(j) Any other violation of § 210 of the Act (D.C. Official Code § 42-3502.10) or this section.

4210.26 Failure of the Rent Administrator to take action or the Office of Administrative Hearings to issue a final order within sixty (60) days of the filing of a capital improvement petition shall not authorize the implementation of any rent surcharge under this section, notwithstanding the authorization to begin work to make the improvement in accordance with § 4210.5(a).

4210.27 Any rent surcharge that is authorized by a final order approving a capital improvement petition shall be implemented in accordance with § 4205 within twelve (12) months of the date on which the order becomes final, including the exhaustion of any rights of appeal, but no earlier than twelve (12) months following any prior rent increase for an affected rental unit; provided, that if the work to make the capital improvement renders the unit uninhabitable beyond the expiration of time, the rent surcharge may be implemented when the unit is reoccupied. Failure to implement the rent surcharge within twelve (12) months will result in the authorization being forfeited in accordance with § 4204.9(e).

4210.28 Not less than sixty (60) days before the expiration of a rent surcharge implemented pursuant to an approved capital improvement petition, a housing provider may request to extend the duration of the rent surcharge by filing, and serving notice on each affected rental unit that the housing provider requires an extension to recover the total cost of the capital improvement by filing an application with the Rent Administrator ("Certificate of Continuation").

4210.29 A Certificate of Continuation shall be executed under oath and shall set forth:

(a) The total cost of the capital improvement as approved by the capital improvement petition, including, if applicable, any changes in the total interest due to a variable-rate loan;

(b) The dollar amount actually received, including any tax credits taken pursuant to § 224(g) of the Act (D.C. Official Code § 42-3502.24(g)), by the implementation of the rent surcharge within its approved duration, including any amount estimated to be collected before the expiration of its approved duration;

(c) An accounting of and reason(s) for the difference between the amounts stated in paragraphs (a) and (b); and

(d) A calculation of the additional number of months required, under currently known conditions, for the housing provider to recover the total cost of the capital improvement by extension of the duration of the rent surcharge.

4210.30 A Certificate of Continuation that is properly filed shall be transmitted within ten (10) business days by the Rent Administrator to the Office of Administrative Hearings under the same case number of the underlying capital improvement petition.

4210.31 A tenant of a rental unit affected by a Certificate of Continuation may file exceptions and objections with the Office of Administrative Hearings within fifteen (15) days of the service of the Certificate of Continuation, setting forth reasons why the requested extension should not be granted pursuant to § 4210.32.

4210.32 A Certificate of Continuation shall be approved if the housing provider demonstrates good cause for the difference between the amounts stated in § 4210.29(a) and (b).

4210.33 If an order approving or denying a Certificate of Continuation is not issued prior to the expiration of the surcharge, the housing provider may continue the implementation of the rent surcharge for no more than the number of months requested in the Certificate of Continuation. If a Certificate of Continuation is subsequently denied, the order of denial shall constitute a final order to the housing provider to pay a rent refund to each affected tenant in the amount of the surcharge that has been demanded or received beyond its original, approved duration in which it was implemented, and, if the rent surcharge remains in effect, to discontinue the surcharge.

4210.34 A rent surcharge implemented pursuant to an approved capital improvement petition may be extended by Certificate of Continuation no more than once.

4211 PETITIONS FOR CHANGES IN RELATED SERVICES OR FACILITIES

4211.1 A housing provider who has changed or proposes to change any related service or facility provided to a rental unit or housing accommodation may petition the Rent Administrator for a rent adjustment under § 211 of the Act (D.C. Official Code

§ 42-3502.11) ("services or facilities petition") to reflect the monthly value of the change.

4211.2 No mandatory fee shall be charged for any service or facility without approval under this section, and any service or facility for which a mandatory fee is charged shall be deemed a related service or facility and shall not be reduced or eliminated without approval under this section.

4211.3 A housing provider may add or increase related services or facilities at any time without a rent increase for any rental unit without waiving the right to file a corresponding services or facilities petition for a rent adjustment at a later date, and may reduce or eliminate the service or facility if no corresponding rent increase has been implemented; provided, that if a related service or facility has been provided for three (3) or more years without a corresponding petition for a rent adjustment, the service or facility shall be deemed to be included in the rent.

4211.4 A housing provider shall not eliminate or substantially reduce related services or facilities provided without prior approval of a services or facilities petition or reduce or eliminate a related service or facility that is required by law, including by the Housing Regulations. If related services or facilities decrease by accident, inadvertence, or neglect by a housing provider and are not promptly restored, the housing provider shall promptly reduce the rent for an affected rental unit by an amount which reflects the monthly value of the change in related services or facilities, until the service or facility is restored or a services or facilities petition authorized the reduction.

4211.5 A tenant may file a petition, in accordance with § 4214, if a housing provider fails to comply with § 4211.4 and does not promptly restore the related service or facility to the previous level or implement a corresponding reduction in the rent charged. The tenant may be awarded a rent refund, or rent rollback if the violation is ongoing, if the tenant proves:

(a) That the reduction or elimination of the related service or facility was substantial, which includes substantial violations of the Housing Regulations provided in § 4216.2;

(b) The dates on which the related service or facility was first reduced or eliminated and the duration of the reduction or elimination; and

(c) The date on which the housing provider had actual or constructive notice of or knowingly caused the reduction or elimination of the related service or facility.

4211.6 A housing provider shall file a services or facilities petition on a form approved by the Rent Administrator ("Services or Facilities Form"), 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 monthly value of any increase in related services or facilities;

(e) An estimate of the monthly 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 charged for each affected rental unit at the time the petition is filed; and

(h) The proposed rents for each affected rental unit that would reflect the change in the related services or facilities.

4211.7 A services or facilities petition shall only be approved if:

(a) The change does not adversely affect the health, safety, and security of the tenants;

(b) The change does not directly result in a substantial violation of the Housing Regulations;

(c) The change is not required by law or intended to correct an ongoing or recurring violation of the Housing Regulations or other legal requirement;

(d) The change is not a retaliatory action, as defined in § 502 of the Act (D.C. Official Code § 42-3505.02) and § 4303 of this title; and

(e) The change is not intended to cause displacement of tenants from the housing accommodation.

4211.8 The monthly value of changes in related services or facilities shall be determined as an adjustment to the rent charged for a rental unit in consideration of the following:

(a) The probable cost to a tenant of obtaining alternate services or facilities comparable to those increased or reduced by the housing provider;

(b) The actual or foreseeable operating cost to the housing provider of the related services or facilities proposed to be changed; or

(c) The fair market value of comparable related services or facilities.

4211.9 The monthly value of changes in related services or facilities shall not include or reflect the cost to the housing provider to make any related capital improvements, whether or not the housing provider could or does file a petition pursuant to § 4210 to recover those costs.

4211.10 After determining, in accordance with § 4208.5, that a services or facilities petition has been properly filed, the Rent Administrator shall transmit the petition to the Office of Administrative Hearings within ten (10) business days.

4211.11 A tenant or tenant association that appears pursuant to § 4208.10 may contest whether the services or facilities petition should be approved or denied, in whole or in part, based on the following issues:

(a) Whether the petition must be denied for any reason provided in § 4211.7;

(b) Whether the proposed monthly value of the change is fair or reasonable based on the factors provided in § 4211.8;

(c) Whether the housing accommodation is properly registered and the housing provider has all required business licenses;

(d) Whether, pursuant to § 4216.4, substantial violations of the Housing Regulations existed on the date the services or facilities petition was filed and have not been abated at the time of a hearing on the services or facilities petition;

(e) Whether the services or facilities petition was filed as a retaliatory action prohibited by § 502 of the Act (D.C. Official Code § 42-3505.02) and § 4303 of this title; or

(f) Any other violation of § 211 of the Act (D.C. Official Code § 42-3502.11) or this section.

4211.12 Any rent increase that is authorized by a final order approving a services or facilities petition shall be implemented in accordance with § 4205 within twelve (12) months of the date on which the order becomes final, including the exhaustion of any rights of appeal, but no earlier than twelve (12) months following any prior rent increase for that rental unit; provided, that the change in related services or facilities shall be implemented prior to the rent increase. Failure to implement the increase within twelve (12) months will result in the authorization being forfeited in accordance with § 4204.9(e).

4211.13 A reduction or elimination of related services or facilities that is authorized by a final order approving a services or facilities petition may be implemented at any time after its approval; provided, that if the final order provides for a corresponding reduction in the rent charged for an affected rental unit rent, the rent reduction shall be implemented prior to the change in related services or facilities.

4211.14 Within thirty (30) days following the date an order approving a services or facilities petition becomes final, the housing provider shall file an amendment to the Registration/Claim of Exemption Form in accordance with § 4103.1.

4212 PETITIONS BASED ON SUBSTANTIAL REHABILITATION

4212.1 A housing provider who proposes to substantially rehabilitate a housing accommodation may petition the Rent Administrator for a rent adjustment under § 214 of the Act (D.C. Official Code § 42-3502.14) ("substantial rehabilitation petition"), which shall be in the form of a rent surcharge based on the cost of the rehabilitation.

4212.2 A housing provider shall not file a substantial rehabilitation petition until all required building permits have been requested or obtained for the proposed improvements or renovations that may constitute a substantial rehabilitation.

4212.3 A housing provider shall not begin any improvement or renovation of a housing accommodation for which it seeks a rent adjustment under this section, or initiate proceedings to evict a tenant in order to substantially rehabilitate any part of a housing accommodation, without the prior approval of the Office of Administrative Hearings, or of the Rent Administrator if all affected units are vacant at the time of filing.

4212.4 A housing provider shall file a substantial rehabilitation petition on a form published by the Rent Administrator ("Substantial Rehabilitation Form") and shall include with the petition the following information:

(a) Detailed plans, specifications, and the projected total cost of the proposed improvements or renovations, in accordance with § 4212.6;

(b) Copies of all applications filed for required building permits for the proposed improvements or renovations, or copies of all required permits if they have been issued;

(c) Documentation of the assessed value of the housing accommodation as determined by the D.C. Office of Tax and Revenue, in accordance with § 4212.14;

(d) 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 the housing provider's retaking of possession;

(e) A schedule showing the current rent charged, as lawfully calculated and properly filed with the Rental Accommodations Division, and the proposed rent surcharge for each rental unit; and

(f) If any tenants will be displaced by the substantial rehabilitation, the information required by § 4212.17.

4212.5 An improvement to or renovation of a housing accommodation shall only be deemed a substantial rehabilitation if the total cost for the improvement or renovation, as determined in accordance with § 4212.6, exceeds fifty percent (50%) of the assessed value of the housing accommodation, as determined in accordance with § 4212.14.

4212.6 The total cost of an improvement or renovation shall be the sum of:

(a) Any costs actually incurred, to be incurred, or estimated to be incurred to make the improvement or renovation, in accordance with § 4212.8;

(b) Any interest that shall accrue on a loan taken by the housing provider to make the improvement or renovation, in accordance with § 4212.9; plus

(c) Any service charges incurred or to be incurred by the housing provider in connection with a loan taken by the housing provider to make the improvement or renovation, in accordance with § 4210.13.

4212.7 For the purposes of calculating interest and service charges, "a loan taken by the housing provider to make the improvement or renovation" shall mean only the portion of any loan that is specifically attributable to the costs incurred to make the improvement or renovation, in accordance with § 4212.8, and the dollar amount of that portion shall not exceed the amount of those costs.

4212.8 The costs incurred to make an improvement or renovation shall be determined based on invoices, receipts, bids, quotes, work orders, loan documents or a commitment to make a loan, or other evidence of expenses as the Administrative Law Judge may find probative of the actual, commercially reasonable costs.

4212.9 The interest on a loan taken to make an improvement or renovation shall mean all compensation paid by the housing provider to a lender for the use, forbearance, or detention of money used to make the improvement or renovation over the amortization period of the loan, in the amount of either:

(a) The interest payable by the housing provider at a commercially reasonable fixed or variable rate of interest on a loan of money used to make the improvement or renovation on that portion of a multi-purpose loan of money used to make the improvement or renovation 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 other evidence of interest as the Administrative Law Judge may find probative; 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 over a seven (7) year period:

(1) 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; plus

(2) Two percentage (2%) points or two hundred (200) basis points.

4212.10 For the purpose of § 4212.9(a), if a housing provider has obtained a loan with a variable rate of interest, the total interest payable shall be calculated using the initial rate of the loan.

4212.11 The service charges in connection with a loan taken to make an improvement or renovation shall include points, loan origination and loan processing fees, trustee's 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, as supported by the relevant portion of a bona fide loan commitment or agreement with a lender, or by other evidence of service charges as the Administrative Law Judge may find probative of the actual, commercially reasonable costs.

4212.12 Any costs, and any interest or fees attributable to those costs, for any specific aspect or component of a proposed improvement or renovation that is not in the interest of the tenants, as provided by § 4212.13, shall be excluded from the calculation of the total cost of the improvement or renovation.

4212.13 Whether a proposed substantial rehabilitation, or any specific aspect or component of the improvement or renovation, is in the interest of the tenants shall be determined by balancing the following factors:

(a) The existing physical condition of the rental units or housing accommodation, as shown by testimony of any witness with personal knowledge of the physical condition of the property or by reports or

testimony of D.C. housing inspectors, licensed engineers, architects and contractors, or other qualified experts as to any matter outside the probable knowledge of a lay person;

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

(c) Whether deficiencies in the existing physical conditions could instead be corrected by improved maintenance, repair, or capital improvement;

(d) Whether the proposed improvements or renovations are optional or cosmetic changes; and

(e) The impact of the proposed rehabilitation on the tenants in terms of any inconvenience due to construction or relocation and the proposed financial costs, including whether tenants have or will have a rent burden greater than thirty percent (30%) of their monthly household incomes.

4212.14 The assessed value of a housing accommodation shall be the official assessment of the property by the D.C. Office of Tax and Revenue for real estate taxation purposes for the current tax year on the date a substantial rehabilitation petition is filed; provided, that if a new tax year begins sixty (60) days or less after the date on which a substantial rehabilitation petition is filed and the assessed value shall be the value determined for the new tax year.

4212.15 The amount of a rent surcharge authorized by a substantial rehabilitation petition for each affected rental unit in a housing accommodation shall be the lesser of:

(a) The generally permissible amount calculated in accordance with § 4212.16; or

(b) One hundred twenty-five percent (125%) of the rent charged for the rental unit, as lawfully calculated and properly filed with the Rental Accommodations Division, at the time the substantial rehabilitation petition is filed.

4212.16 The generally permissible amount of a rent surcharge for each affected rental unit pursuant to a substantial rehabilitation petition shall be the quotient of:

(a) The total cost of the improvements or renovations, as provided in § 4212.6, that are in the interest of the tenants; divided by

(b) The amortization period of the loan taken to make an improvement or renovation, as documented by the housing provider by means of the relevant portion of a bona fide loan commitment or agreement with a lender, or, in

the absence of a loan commitment or agreement, a period of two hundred forty (240) months; divided by

(c) The number of rental units in the housing accommodation.

4212.17 A housing provider that seeks authorization, pursuant to § 501(h) of the Act (D.C. Official Code § 42-3505.01(h)), to issue notices to vacate for the purposes of performing construction or other work to substantially rehabilitate a housing accommodation shall file, with the substantial rehabilitation petition, the following information:

(a) A draft of the notice to vacate to be issued to the tenant if the petition is approved, in accordance with § 4302 of this title;

(b) A timetable for all aspects of the plan for substantial rehabilitation, including:

(1) The relocation of each tenant from the rental unit and back into the rental unit;

(2) The commencement of the work; and

(3) The completion of the work; and

(c) A relocation plan for each tenant that provides:

(1) The amount of the relocation assistance payment for the rental unit, in accordance with title VII of the Act (D.C. Official Code §§ 42-3507.01 *et seq.*);

(2) A specific plan for relocating the tenant to another rental unit in the housing accommodation, or, if the housing provider states that relocation within the same building or complex is not practicable, the reasons for the statement;

(3) If relocation to another rental unit in the housing accommodation is not practicable, a list of units within the housing provider's portfolio of rental accommodations made available to each dispossessed tenant, or, where the housing provider asserts that relocation within the housing provider's portfolio of rental accommodations is not practicable, the justification for such assertion;

(4) If relocation to a rental unit pursuant to subparagraph (2) or (3) is not practicable, a list for each tenant affected by the relocation plan of at least three (3) other rental units available to rent in a housing

accommodation in the District of Columbia, each of which shall be comparable to the rental unit in which the tenant currently lives; and

(5) A list of tenants with their current addresses and telephone numbers.

4212.18 Authorization to issue a notice to vacate for the purposes of performing construction or other work to substantially rehabilitate a housing accommodation shall be approved pursuant to a substantial rehabilitation petition only if the rehabilitation is in the interest of each tenant proposed to be displaced, in accordance with § 4212.13, taking into consideration the relocation plan for the tenant and any relocation assistance to which the tenant is entitled.

4212.19 A Substantial Rehabilitation Form, as filed with the Rent Administrator, shall be accompanied by external documents to substantiate the total cost of the improvement or renovation. A housing provider that has filed a substantial rehabilitation petition shall have a continuing obligation to supplement the record of the adjudication of the petition with any new documentation reflecting the actual total cost of the improvement or renovation, until a final order approves or denies the petition or the evidentiary record of a hearing closes.

4212.20 A Substantial Rehabilitation Form, as filed with the Rent Administrator, shall include a statement of whether any tenant will be displaced by the substantial rehabilitation, the unit numbers in which the tenant resides, a proposed timetable and relocation plan for each tenant to be displaced, and that relocation assistance is available.

4212.21 After determining, in accordance with § 4208.5, that a substantial rehabilitation petition has been properly filed, the Rent Administrator shall transmit the petition to the Office of Administrative Hearings within ten (10) business days.

4212.22 Notwithstanding § 4212.21, if all rental units proposed to be affected by a substantial rehabilitation petition is claimed to be vacant, the Rent Administrator shall mail notice to each unit that a petition has been filed claiming the unit is vacant and affording any tenant a reasonable opportunity to respond. If the Rent Administrator is satisfied that each affected rental unit is vacant, the Rent Administrator shall review the petition and supporting materials in accordance with this section and issue a final order or granting or denying the petition, in whole or in part.

4212.23 If the Rent Administrator issues a final order denying a vacant-unit petition in whole or in part in accordance with § 4212.22, the housing provider may appeal to the Commission in accordance with § 3802. If the Commission determines that an evidentiary hearing is necessary to decide the petition, the Commission shall remand the matter to the Office of Administrative Hearings.

4212.24 A tenant or tenant association that appears pursuant to § 4208.10 may contest whether the substantial rehabilitation petition should be approved or denied, in whole or in part, based on the following issues:

(a) The validity or accuracy of the calculation of the total cost of the improvement or renovation and the assessed value of the housing accommodation;

(b) Whether any improvement or renovation is in the interest of the tenants or affects a specific rental unit;

(c) Whether the housing provider has obtained all required District government permits by the time of an evidentiary hearing; provided, that the grounds for any agency's issuance or denial of a required permit shall not be contested;

(d) The validity or accuracy of the amount of a rent surcharge authorized for an individual rental unit in a housing accommodation;

(e) The completeness and accuracy of any information provided to support the issuance of notices to vacate;

(f) Whether the displacement of tenants, if any, is warranted because the improvements or renovations cannot safely or reasonably be made while a rental unit is occupied;

(g) Whether the relocation plan, if any, is in the interest of the tenants;

(h) Whether the housing accommodation is properly registered and the housing provider has all required business licenses;

(i) Whether, as provided by § 4216.4, substantial violations of the Housing Regulations existed on the date the substantial rehabilitation petition was filed and have not been abated on the date of a hearing on the substantial rehabilitation petition, except as provided by § 4212.25;

(j) Whether the substantial rehabilitation petition was filed as a retaliatory action prohibited by § 502 of the Act (D.C. Official Code § 42-3505.02) and § 4303 of this title; or

(k) Any other violation of § 214 of the Act (D.C. Official Code § 42-3502.14) or this section.

4212.25 Notwithstanding any other provision of this chapter, a substantial rehabilitation petition may be approved if the housing accommodation is not in substantial compliance with the Housing Regulations if the improvements or renovations will correct each identified violation.

4212.26 Failure of the Rent Administrator to take any action or the Office of Administrative Hearings to issue a final order on a substantial rehabilitation petition in a timely manner shall not authorize a housing provider to initiate any alterations or renovations for which a rent surcharge is sought in the petition or to initiate proceedings to evict a tenant in order to substantially rehabilitate any part of a housing accommodation.

4212.27 A notice to vacate pursuant to § 501(h) of the Act (D.C. Official Code § 42-3505.01(h)) authorized by a substantial rehabilitation petition shall be served no less than one hundred twenty (120) days before the housing provider intends to or actually takes action to recover possession of the rental unit and shall comply with all applicable provisions of § 4302 of this title.

4212.28 A housing provider that has issued notices to vacate in accordance with § 4212.27 shall obtain interim contact information for each tenant displaced by the rehabilitation and shall file the information with the Rent Administrator. The housing provider shall file a notice with the Rent Administrator when each displaced tenant retakes possession of his or her original rental unit.

4212.29 Within thirty (30) days of the completion of a substantial rehabilitation and the return of each displaced tenant, if any, to his or her original rental unit, a housing provider shall file an affidavit attesting to the completion with the Rent Administrator. For the purposes of § 4204.9, the date of filing of an affidavit of completion shall be deemed the date on which the rent surcharge becomes authorized, and the adjustment shall be implemented, in accordance with § 4205, within twelve (12) months of the filing of a certification of completion.

4212.30 A rent surcharge authorized by a final order approving an application under this section shall be implemented as a rent adjustment for an affected rental unit in accordance with § 4205 within twelve (12) months of the date of the order, including the exhaustion of any rights of appeal, but no earlier than twelve (12) months following any prior rent increase for that rental unit. Failure to implement the rent surcharge within twelve (12) months will result in the authorization being forfeited in accordance with § 4204.9(e); provided, that if the rehabilitation of a unit renders it uninhabitable beyond the expiration of time, the rent surcharge may be implemented at the time the unit is reoccupied.

4213 RENT ADJUSTMENTS BY VOLUNTARY AGREEMENT

4213.1 Seventy percent (70%) or more of the tenants of a housing accommodation, not including tenants of units exempt from the Rent Stabilization Program for any reason under § 4106, may enter into a voluntary agreement with the housing provider that, subject to the administrative approval, may:

(a) Establish the rents for rental units in the housing accommodation;

(b) Alter the provision or levels of related services or facilities; or

(c) Provide for capital improvements or the performance of deferred, ordinary maintenance or repairs.

4213.2 A housing provider, a tenant, or a tenant association shall initiate an application for administrative approval of a voluntary agreement by filing a proposed voluntary agreement with the Rent Administrator ("Proposed Voluntary Agreement"), using a form published by the Rent Administrator and attaching any additional information required by § 4213.3. The form published by the Rent Administrator shall include a list of sources of technical assistance and resource support for housing providers and tenants.

4213.3 A Proposed Voluntary Agreement, when filed and served in accordance with §§ 4213.4, shall include:

(a) The current rent charged, as lawfully calculated and properly filed with the Rental Accommodations Division, and the proposed rent for each rental unit, including the proposed dollar amount and percentage of each rent adjustment;

(b) The current and proposed provision or levels of related services or facilities;

(c) Any provisions for capital improvements or performance of deferred, ordinary maintenance or repairs, including the scope and costs of the work to be performed;

(d) All other conditions by which the tenants and housing provider will to be bound, including:

(1) Any consideration or promises exchanged to induce the approval of any party to the voluntary agreement and copies of any written agreement(s) to those conditions; and

(2) Any other contracts or agreements that are conditioned on the signing or approval of the voluntary agreement, including agreements for the exercise, waiver, or assignment of rights under the Tenant Opportunity to Purchase Act of 1980 (D.C. Law 3-86; D.C. Official Code §§ 42-3404.01 *et seq.*) or for the settlement or dismissal of any pending or anticipated civil or administrative cases or claims, and copies of any such contracts or agreements;

;

(e) A list of all rental units, including vacant units, noting whether the rental unit is covered by the Rent Stabilization Program or exempt, and all tenants in the housing accommodation by name and rental unit number or

identifying letter, including whether the resident(s) of any unit are employees of the housing provider, and, for covered rental units, a space for each tenant's signature and telephone number and a space for each tenant to approve or disapprove of the agreement;

(f) A list of any rental units for which the housing provider has notice that the unit is leased to and occupied by an elderly tenant or tenant with a disability, the name of each tenant in the unit, and the current rent charged for the unit;

(g) An estimated, nonbinding timeline for the commencement and completion of any work to be performed through the voluntary agreement; and

(h) A copy of D.C. Official Code § 42-3502.15 and 14 DCMR § 4213.

4213.4 Prior to or simultaneously with the filing of a Proposed Voluntary Agreement with the Rent Administrator, the party initiating an application shall:

(a) Serve a copy of the Proposed Voluntary Agreement upon each tenant in the affected housing accommodation, and the housing provider if the initiating party is not the housing provider, accompanied by a letter briefly explaining the purpose of the application, stating the amount of the proposed rent adjustment for the recipient unit, if any, and notifying the tenant of the opportunity to contest the application provided by this section; and

(b) Transmit a copy of the Proposed Voluntary Agreement to the Office of the Tenant Advocate and the Housing Provider Ombudsman.

4213.5 Within five (5) business days of the receipt of a Proposed Voluntary Agreement, the Rent Administrator shall make a preliminary determination that the application complies with the filing requirements of § 4213.3 and the service requirements of § 4213.4 and, if so, mail notice to the tenant of each affected rental unit, and the housing provider, if the initiating party is not the housing provider, in accordance with § 4213.8.

4213.6 If the Rent Administrator determines that an application for approval of a voluntary agreement was not initiated in compliance with the filing requirements of § 4213.3, the Rent Administrator, in his or her discretion, shall either:

(a) Dismiss the application without prejudice; or

(b) Grant the initiating party leave to amend the application, in which case the Proposed Voluntary Agreement shall be deemed filed on the date it is amended.

4213.7 If the Rent Administrator determines that an initiating party has not complied with the service requirements of § 4213.4, the Rent Administrator, in his or her discretion, shall either:

(a) Dismiss the application without prejudice; or

(b) Deem the Proposed Voluntary Agreement to be filed on the date the initiating party demonstrates compliance with the service requirements.

4213.8 After the proper filing of a Proposed Voluntary Agreement, the Rent Administrator shall issue a brief notice of the following in accordance with § 4213.5:

(a) The date of filing of the application;

(b) The time periods provided by this section for negotiation, revision, and signing of the voluntary agreement;

(c) That any affected person may contest the application as provided in **Error! Reference source not found.** and the time period to do so; and

(d) The process to claim an exemption as an elderly tenant or tenant with a disability or to waive that exemption under § 224 of the Act (D.C. Official Code § 42-3502.24).

4213.9 The housing provider and each tenant shall have a minimum of thirty (30) days from the date a Proposed Voluntary Agreement is filed and properly served to consider the agreement and confer with other parties ("Negotiation Period") before any revised terms may be filed with the Rent Administrator; provided, that this time may be extended, within the discretion of the Rent Administrator, if time is needed to receive or review applications for exemptions for elderly tenants or tenants with a disability, or if the Rent Administrator determines that such time is appropriate for further negotiations. Housing providers and tenants are encouraged to enter into face-to-face negotiations to discuss the terms of a voluntary agreement during this time.

4213.10 If the housing provider and tenants seek to negotiate changes to a Proposed Voluntary Agreement and are desirous of achieving a successful agreement, the housing provider or any tenant may seek the confidential assistance of the Conciliation Service of the Rental Accommodations Division, as established under § 503 of the Act (D.C. Official Code § 42-3505.03) and § 3913 of this title.

4213.11 The Rent Administrator, in his or her discretion, and upon his or her own initiative or upon the request of a party, may call for a meeting to discuss the terms of a Proposed Voluntary Agreement, including but not limited to the criteria for approval or disapproval of a voluntary agreement, so long as the Rent Administrator

determines that the meeting should not be conducted as a mediation or conciliation pursuant to § 4213.10.

4213.12 After the expiration of the Negotiation Period, the initiating party may begin collecting signatures of tenants to approve or reject the Proposed Voluntary Agreement, including any modifications made during the negotiation period. If the version circulated for signatures is different from the initial Proposed Voluntary Agreement, the initiating party shall also file a copy of the modified Proposed Voluntary Agreement with the Rent Administrator including all information required by § 4213.3, other than paragraph (h). No tenant shall be requested to sign a modified Proposed Voluntary Agreement without being notified in writing that modifications have been made since the original filing and being given an opportunity to review the entire agreement. All signatures given to approve or reject the Proposed Voluntary Agreement shall be in ink; electronic signatures shall not be valid.

4213.13 A signature given to approve a Proposed Voluntary Agreement shall only be valid if it is given subsequent to and no more than sixty (60) days after the end of the Negotiation Period ("Signature Collection Period"). Before the end of the Signature Collection Period, the initiating party may request, no more than once, that the Rent Administrator extend the time, by no more than thirty (30) days, for good cause shown.

4213.14 Agents or employees of the housing provider, or any person with a direct or indirect interest in the housing accommodation, as defined in §§ 4107.8-4107.12, residing in the housing accommodation shall not be eligible to sign a voluntary agreement and shall not be considered in either the numerator or denominator for calculating whether seventy percent (70%) of the tenants approve of the Proposed Voluntary Agreement.

4213.15 No more than three (3) business days after the end of the Signature Collection Period, the initiating party shall file with the Rent Administrator a copy of the Proposed Voluntary Agreement accompanied by all signatures that have been obtained ("Final Voluntary Agreement").

4213.16 A Final Voluntary Agreement, when filed with the Rent Administrator, shall include:

(a) All the terms and information required by § 4213.3, other than paragraph (h);

(b) A certification that the agreement was entered into voluntarily and that no form of duress, harassment, intimidation, coercion, fraud, deceit, or misrepresentation of material fact or law was employed by any party involved in securing any signature;

(c) A certification that the agreement is complete and includes all terms and conditions by which the housing provider and any tenant is bound, that no further consideration or promises have been exchanged or provided to induce any party to sign the Proposed Voluntary Agreement, and that all parties have signed the same, complete agreement;

(d) The signatures of:

(1) The housing provider;

(2) Each tenant agreeing to the terms of the voluntary agreement, which shall be not less than seventy percent (70%) of the eligible tenants; and

(3) Each tenant electing to sign to indicate his or her disapproval of the terms of the voluntary agreement;

(e) A certification that the filing party made a good faith effort to obtain the signature, whether agreeing to or disapproving of the Proposed Voluntary Agreement, of each tenant for whom a signature is not filed; and

(f) A certification that a translated copy of each required form published by the Rent Administrator and each document required by paragraph (a) has been provided to each tenant that the initiating party knows or reasonably should know does not speak English as their primary language and who has a limited ability or no ability to read, speak, write, or understand English, if such tenant's primary language is Spanish, Chinese, Vietnamese, Korean, French, or Amharic.

4213.17 After the filing of a Final Voluntary Agreement, the Rent Administrator shall dismiss, with or without prejudice, without a hearing, any application for approval of a voluntary agreement that has not complied with the requirements of §§ 4213.2-.18.

4213.18 Pursuant to § 215(c) of the Act (D.C. Official Code § 42-3502.15(c)), if a Final Voluntary Agreement is filed with the Rent Administrator that is not denied under § 4213.17, and the only terms of the agreement are to adjust the rent for each rental unit within a housing accommodation by the same, specified percentage, notwithstanding any exemption provided by § 224(i) of the Act (D.C. Official Code § 42-3502.24(i)), the Rent Administrator shall issue a final order approving the voluntary agreement and serve the order upon the housing provider and each affected tenant. If the Final Voluntary Agreement contains terms to any other effect, the Rent Administrator shall serve notice on each tenant and the housing provider that the Final Voluntary Agreement has been filed and giving notice of the opportunity to file exceptions and objections in accordance with § 4213.19.

4213.19 Within thirty (30) days of the service of notice of the filing of a Final Voluntary Agreement, the housing provider and any tenant of the affected housing accommodation may file with the Rent Administrator a clear and concise statement of exceptions and objections to the approval of the application.

4213.20 Exceptions and objections filed pursuant to § 4213.19 may contest whether the application should be approved or denied based on the following issues:

(a) Whether the initiating party complied with all requirements of §§ 4213.2 – 4213.16 and whether any failure of compliance was remedied;

(b) Whether the application must be denied for any reason provided in § 4213.21;

(c) Whether the housing accommodation is properly registered and the housing provider has all required business licenses;

(d) Whether, pursuant to § 4216.4, substantial violations of the Housing Regulations existed on the date that the application for approval of the voluntary agreement was initiated and have not yet been abated;

(e) Whether the voluntary agreement was filed as or any term of the agreement constitutes a retaliatory action prohibited by § 502 of the Act (D.C. Official Code § 42-3505.02) and § 4303 of this title; or

(f) Any other violation of § 215 of the Act (D.C. Official Code § 42-3502.15) or this section.

4213.21 An application under this section shall be denied if:

(a) All or part of any tenant's approval of a Final Voluntary Agreement has been induced by coercion, including duress, harassment, intimidation, fraud, deceit, or misrepresentation of material facts, of the tenant's legal rights or obligations, or of the housing provider's legal rights or obligations;

(b) The Final Voluntary Agreement contradicts the purposes of the Act as stated in § 102 of the Act (D.C. Official Code § 42-3501.02); or

(c) The Final Voluntary Agreement results in unreasonable rent adjustments for any rental unit or inequitable treatment of specific tenants or rental units or classes of tenants or rental units.

4213.22 For the purposes of § 4213.21(c), the reasonableness of any proposed rent adjustments for a rental unit in a Final Voluntary Agreement shall be determined in consideration of the following factors, as may be relevant:

(a) The cost, scope, and nature of any alterations in the provision or levels of related services or facilities in proportion to the amount of the rent adjustments and to the rents for comparable rental units;

(b) Provisions, if any, for capital improvements, the performance of deferred, ordinary maintenance or repairs, and the status or establishment of any replacement reserve fund maintained by the housing provider;

(c) Other costs stated in the Final Voluntary Agreement;

(d) The housing provider's rate of return on the housing accommodation, as defined in § 4209.8;

(e) Current rents for comparable rental units in housing accommodations physically proximate to the subject housing accommodation;

(f) The impact of any provisions on the tenants in terms of any inconvenience due to construction or relocation;

(g) The proposed financial costs to tenants, including whether tenants have or will have a rent burden greater than thirty percent (30%) of their monthly household incomes;

(h) Other terms and conditions agreed to by the housing provider and tenants, as required to be filed under 4213.3(d); and

(i) The justification for any proposed disparities between tenants or classes of tenants or rental units in the percentage by which the rents will be adjusted.

4213.23 For the purposes of § 4213.22(i), reduced rent adjustments for rental units occupied by elderly tenants and tenants with disabilities, whether or not the tenants qualify for an exemption pursuant to § 224(i) of the Act (D.C. Official Code § 42-3502.24(i)) and § 4215.2 of this chapter or have previously filed an application to register for protected status under § 4215, shall not be deemed inequitable or unjustified disparities in rent adjustments.

4213.24 If no exceptions and objections to a Final Voluntary Agreement are filed within thirty (30) days in accordance with § 4213.19, the Rent Administrator, within five (5) business days of the expiration of that time, shall issue a final order approving the application and serve the final order upon the housing provider and each affected tenant in the housing accommodation.

4213.25 If exceptions and objections to a Final Voluntary Agreement are filed within thirty (30) days in accordance with § 4213.19, the Rent Administrator, within fifteen (15) days of the expiration of that time, shall transfer the record of the voluntary agreement application to the Office of Administrative Hearings for a hearing and decision on each issue raised in the exceptions and objections.

4213.26 A hearing before the Office of Administrative Hearings on a contested voluntary agreement application, shall be conducted in accordance with 1 DCMR Chapter 28 and 1 DCMR §§ 2920-2941, and the initiating party shall have the burden of proving its entitlement to approval of the application with regard to each contested issue.

4213.27 No voluntary agreement shall be deemed approved or disapproved at any time prior to the issuance of a final order by the Rent Administrator or, if a hearing on the application is held, by the Office of Administrative Hearings.

4213.28 If a voluntary agreement is approved by the Rent Administrator or the Office of Administrative Hearings, the final order approving the application shall be binding on the housing provider and all rental units in the housing accommodation and shall state:

(a) The new rent charged for each rental unit;

(b) Any changes to provision or levels of related services or facilities;

(c) Any provisions for capital improvements;

(d) Any provisions for the performance of deferred maintenance and repairs;

(e) Any other conditions by which the parties are bound; and

(f) The rights of the parties to appeal the final order.

4213.29 A final order of the Rent Administrator or the Office of Administrative Hearings approving or denying an application under this section may, within ten (10) business days of its issuance, be appealed to the Commission in accordance with § 3802 by any party to the case that is aggrieved by the final order. In accordance with § 3805, a housing provider shall not implement a rent adjustment authorized by a final order while an appeal of that order is pending before the Commission.

4213.30 A rent adjustment authorized by a final order approving an application under this section shall be implemented for an affected rental unit in accordance with § 4205 within twelve (12) months of the date of the order, including the exhaustion of any rights of appeal, but no earlier than twelve (12) months following any prior rent increase for that rental unit; provided, that any changes in related services or facilities shall be implemented prior to the rent increase and the rent increase shall not be deemed first-authorized until all changes are implemented, and that if the work to make any capital improvement renders the unit uninhabitable beyond the expiration of time, the rent surcharge may be implemented when the unit is reoccupied. Failure to implement the adjustment within twelve (12) months will result in the authorization being forfeited in accordance with § 4204.9(d).

4213.31 If a Final Voluntary Agreement contains any terms to alter the provision or levels of related services or facilities at a housing accommodation, within thirty (30) days following the date an order approving the voluntary agreement application becomes final, the housing provider shall file an amendment to the Registration/Claim of Exemption Form in accordance with § 4103.1.

4213.32 A tenant of an affected rental unit who receives notice of an application filed under this section and who fails to contest the application shall not at a later date contest or challenge, by tenant petition under § 4214, an order of the Rent Administrator or the Office of Administrative Hearings approving the voluntary agreement, except as provided in § 4214.6; provided, that the tenant may challenge the implementation of a rent adjustment under § 4214.4.

4213.33 If a housing provider fails to comply with any term of an approved voluntary agreement, a tenant or tenant association may file a tenant petition challenging the rent adjustment implemented or provision or levels of related service or facility pursuant to the voluntary agreement, in accordance with § 4214.6(g).

4214 TENANT PETITIONS

4214.1 The tenant of a rental unit covered by the Rent Stabilization Program, as provided in § 4200.3, or a tenant association at a covered housing accommodation may, by filing a petition with the Rent Administrator, contest the rent for a rental unit on one or more of the grounds provided in § 4214.2 through .8; provided, that:

(a) A tenant shall file a petition only with regard to the rent for that tenant's rental unit;

(b) A tenant association shall file a petition only with regard to the rent for the rental unit(s) of a tenant or tenants who has or have agreed in writing to be represented by the tenant association; and

(c) A reduction or elimination of related services or facilities, including the existence of substantial violations of the Housing Regulations, shall only be deemed to affect the lawful rent for a rental unit if the reduction or elimination is in or to the tenant or tenants' rental unit(s) or a common element of the housing accommodation.

4214.2 A tenant or tenant association may, by filing a petition with the Rent Administrator, contest:

(a) The initial rent for a newly established rental unit or housing accommodation established under § 4201;

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

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

4214.3 A tenant or tenant association may, by filing a petition with the Rent Administrator, contest the rent for a rental unit on the grounds that:

(a) The rent must be reduced because of reductions in related services or facilities, including substantial violations of the Housing Regulations;

(b) The housing provider has failed to reduce the rent charged or remove any rent surcharge as required for an elderly tenant or tenant with a disability by § 224 of the Act (D.C. Official Code § 42-3502.24) and § 4215 of this chapter; or

(c) A rent adjustment was unlawful on one or more of the grounds provided in §§ 4214.4, 4214.5, or 4214.6.

4214.4 A tenant or tenant association may, by filing a petition with the Rent Administrator, contest any rent adjustment on the grounds that:

(a) A rent increase was implemented while the housing provider had not met the registration requirements of Chapter 41 for the rental unit or housing accommodation;

(b) A rent increase was implemented while the housing provider lacked a housing business license, as required by 14 DCMR § 200, or any other license to do business as a housing provider or operate the housing accommodation under District law;

(c) A rent increase was implemented while the rental unit or the common elements of the housing accommodation were not in substantial compliance with the Housing Regulations, in violation of § 4216;

(d) A rent increase was implemented by a notice that did not state the type of rent adjustment, in violation of § 4205.4(a)(1), the increase was based on more than one (1) type of rent adjustment, in violation of § 4204.1, or the increase was not based on any valid authorization;

(e) A rent increase was implemented more than twelve (12) months after the authorization for it became effective, in violation of §§ 4204.9, or a vacancy adjustment was filed more than thirty (30) days after the vacancy occurred, in violation of §§ 4205.6(b)(1) and 4207;

(f) A rent increase was implemented within twelve (12) months of a prior rent increase, in violation of §§ 4205.7 or 4205.8;

(g) A rent increase was implemented without notice or with less than thirty (30) days' notice of the increase to the tenant, or the notice was otherwise not in compliance with § 4205.4;

(h) A rent increase was not properly filed with the Rental Accommodations Division within thirty (30) days after its effective date, or the filing was otherwise not in compliance with § 4204.10;

(i) A rent increase was implemented as retaliatory action in violation of § 502 of the Act (D.C. Official Code § 42-3505.02) and § 4303 of this title.

4214.5 A tenant or a tenant association may, by filing a petition with the Rent Administrator, contest the implementation of any rent adjustment for which prior administrative approval is not required, in accordance with § 4204.2, on the grounds that:

(a) An adjustment of general applicability was implemented in an amount greater than the effective amount published by the Commission or allowed pursuant to §§ 208(h)(2) or 224(a) of the Act (D.C. Official Code §§ 42-3502.08(h)(2) or 42-3502.24(a)) and § 4206 of this chapter;

(b) A vacancy adjustment was implemented that:

(1) Did not follow a vacancy that occurred as required by § 4207.2;

(2) Exceeds the percentage of the lawful rent charged to the prior tenant allowed by §§ 213(a)(1) or (2) of the Act (D.C. Official Code § 42-3502.13(a)(1), (2)) and § 4207.5 of this chapter;

(3) If implemented before the applicability date of the Vacancy Increase Reform Amendment Act of 2018 (D.C. Law 22-223), was not based on a substantially identical rental unit, as previously defined in § 213(b) of the Act (D.C. Official Code § 42-3502.13(b)), if the adjustment was based on § 213(a)(2) of the Act (D.C. Official Code § 42-3502.13(a)(2));

(4) Was implemented within twelve (12) months of a prior vacancy adjustment, in violation of § 208(g)(3) of the Act (D.C. Official Code § 42-3502.08(g)(3)) and § 4205.8 of this chapter, or of the implementation of a hardship surcharge, in violation of § 213(c) of the Act (D.C. Official Code § 42-3502.13(c)) and § 4205.8 of this chapter; or

(5) Was implemented and the required disclosures were not timely provided to the new tenant, in violation of § 213(d) of the Act (D.C. Official Code § 42-3502.13(d)) and § 4207.7 of this chapter; or

(c) For any reason provided in § 4214.4.

4214.6 A tenant or a tenant association may, by filing a petition with the Rent Administrator, challenge or contest the implementation of any rent adjustment for which prior administrative approval is required, in accordance with § 4204.3 or .4, including a rent ceiling adjustment preserved by § 206(a) of the Act (D.C. Official Code § 42-3502.06(a)), on the grounds that:

(a) A rent increase was implemented without obtaining the necessary prior approval, or while an order authorizing a rent adjustment was stayed pending appeal;

(b) A rent increase was implemented in an amount greater than the approved rent adjustment;

(c) A rent ceiling adjustment preserved by § 206(a) of the Act (D.C. Official Code § 42-3502.06(a)) was not taken and perfected in accordance with the provisions of the Act and Chapters 41 and 42 of this title in effect at the time the adjustment became authorized;

(d) The administrative approval for a rent adjustment was obtained by fraud, deceit, or concealment or misrepresentation of material fact, and the existence of such wrongdoing was not known to the tenant while the petition or application was or could have been contested;

(e) The tenant or a tenant represented by the tenant association was entitled to and did not receive lawful service or have actual notice of the pending petition or application for the rent adjustment, as required by §§ 4208, 4213, or 4111;

(f) The housing provider, subsequent to the approval of a rent adjustment, has failed to perform an obligation under a capital improvement, services and facilities, or substantial rehabilitation petition or under a voluntary agreement; or

(g) For any reason provided in § 4214.4.

4214.7 A tenant or tenant association may contest, by filing a petition with the Rent Administrator, the rent charged for a rental unit on the grounds that related services or facilities have been reduced without prior administrative approval, or that a related service or facility that is required by law was reduced or eliminated, and the service or facility was not promptly restored, as required by §§ 4211.3 and 4211.4.

4214.8 A tenant or tenant association may contest, by filing a petition with the Rent Administrator, the rent for a rental unit on the grounds that there have been excessive and prolonged substantial violations of the Housing Regulations, in accordance with § 4216.8.

4214.9 The tenant of any rental unit or a tenant association in any housing accommodation covered by the Act, without regard to the coverage of the Rent Stabilization Program, may, by filing a petition with the Rent Administrator, complain of and request appropriate relief for any other violation of the Act arising under Titles II, V, VI, or XI of the Act (D.C. Official Code Title 42, Chapter 35, subchapters 2, 5, 6, or 9) or Chapters 43 or 44 of this title, including, but not limited to:

(a) Any violation of the notice requirements of § 501 of the Act (D.C. Official Code § 42-3505.01) and §§ 4300-4302 of this title, 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 pursuant to § 501(b) of the Act (D.C. Official Code § 42-3505.01(b)) and § 4301 of this title, if applicable;

(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 (D.C. Official Code § 42-3507.01) and § 4401 of this title, if applicable;

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

(6) The notice, if issued pursuant to § 501(b) or (c) of the Act (D.C. Official Code § 42-3505.01(b) or (c)), fails to inform the tenant that a victim of an intra-family offense may be protected from eviction under § 501(c-1) of the Act (D.C. Official Code § 42-3505.01(c-1)).

(b) Any proposed retaliatory eviction or other retaliatory act in violation of § 502 of the Act (D.C. Official Code § 42-3505.02) and § 4303 of this title;

(c) Any demand for or failure to refund a security deposit in violation of § 217 of the Act (D.C. Official Code § 42-3502.17) and §§ 308-311 of this title;

(d) Any interference with the organizing activities listed in § 506(d) of the Act (D.C. Official Code § 42-3505.06(d)) and § 4304 of this title;

(e) Any rent in excess of the amount permitted when a tenant is required to be released from the obligations of a lease by § 507 of the Act (D.C. Official Code § 42-3505.07) and § 4305 of this title; or

(f) Any demand for or receipt of a late fee in violation of, or in excess of the amount allowable under, § 531 of the Act (D.C. Official Code § 42-3505.31) and § 4306 of this title.

4214.10 A tenant petition filed under this section shall be filed within three (3) years of the effective date of the rent adjustment, or the date on which any other violation of the Act occurred, including a reduction or elimination of related services or facilities. For the purposes of this section, the effective date of a rent adjustment shall be:

(a) For the initial rent after a rental unit is established or ceases to be excluded from the Act or exempt from the Rent Stabilization Program, in accordance with §§ 4201, 4202, or 4203, the date on which rent is first due for a newly established unit or first due following the event that causes the unit to be covered by the Rent Stabilization Program;

(b) In general, the later of the date on which a demand for increased rent is first due, in accordance with § 4205.6(a), or, following a vacancy adjustment, first paid by a new tenant, notwithstanding § 4205.6(b);

(c) If the basis for a rent adjustment is a rent ceiling adjustment preserved by § 206(a) of the Act (D.C. Official Code § 42-3502.06(a)), the date on which the corresponding adjustment to the rent charged is implemented;

(d) If related services or facilities are substantially reduced or eliminated without being promptly restored, either:

(1) The first date on which the tenant had actual or chargeable knowledge of the reduction or elimination; or

(2) If the reduction or elimination is a substantial violation of the Housing Regulations, any date on which the violation existed, regardless of the date the tenant first had actual notice of the violation; or

(e) For a failure to comply with any obligation under a capital improvement petition, services or facilities petition, substantial rehabilitation petition, or voluntary agreement, the earlier of:

(1) The date on which the tenant had actual notice that the housing provider repudiated the obligation; or

(2) (A) The stated date, if any, in an approved petition or voluntary agreement by which the obligation was due or was required to be completed by the Act or this chapter; or

(B) If no date is stated, the date by which the obligation reasonably should have been completed.

4214.11 A tenant or tenant association shall file a petition under this section in accordance with § 3901 on a form published by the Rent Administrator and shall include the following:

(a) Proof of tenancy by rent receipt, cancelled check, copy of lease agreement, or, if written proof is not available to the tenant, attestation of tenancy by oral agreement or by conduct of the parties;

(b) If a tenant association is filing the petition, proof of the authority of the tenant association to appear in a representative capacity on behalf of any tenant;

(c) A copy of a notice to quit or vacate, if applicable; and

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

4214.12 The Rent Administrator, within five (5) days of the receipt of a tenant petition, shall determine that the petition complies with the requirements listed § 4214.11 and, if so, shall transmit the petition, accompanied by the Registration/Claim of Exemption Form for the subject housing accommodation, to the Office of Administrative Hearings within ten (10) business days. If the Rent Administrator determines that the petition raises issues that may be resolved through the Conciliation and Arbitration Service established by § 3913, the Rent Administrator may delay the transmittal of the petition for a reasonable period of time to attempt a settlement of the petition.

4214.13 Notice that a case has been opened at the Office of Administrative Hearings on a tenant petition shall be provided in accordance with 1 DCMR § 2923.

4214.14 A tenant petition shall be adjudicated before the Office of Administrative Hearings in accordance with 1 DCMR Chapter 28 and 1 DCMR §§ 2920-2941, and the party filing the petition shall bear the burden of proving its claims, except claims or defenses for which the burden is shifted as provided by the Act, Chapters 41-44 of this title, or 1 DCMR Chapter 28 and 1 DCMR §§ 2920-2941.

4214.15 The Office of Administrative Hearings may order a housing provider to provide relief to a tenant pursuant to § 901 of the Act (D.C. Official Code § 42-3509.01) and § 4217 of this chapter; except, that relief based on petitions filed pursuant to § 4214.9(c) relating to security deposits shall be provided in accordance with §§ 308-311 of this title.

4214.16 An appeal of a final order of the Office of Administrative Hearings on a tenant petition may be filed with the Commission in accordance with Chapter 38 of this title.

4215 PROHIBITED RENT ADJUSTMENTS FOR ELDERLY TENANTS AND TENANTS WITH A DISABILITY

4215.1 An approved rent surcharge for which petition was approved after October 1, 2018, shall not be implemented on and shall be removed from a rental unit while the unit is leased to and occupied by an elderly tenant or a tenant with a disability with a qualifying income, as published annually by the Commission ("protected tenant").

4215.2 For the purposes of this section, any part of the rent charged for a rental unit shall be deemed a rent surcharge if the unit is or becomes leased to and occupied by a protected tenant and the rent adjustment corresponding to that part of the rent charged was approved or implemented pursuant to:

(a) A related services or facilities petition under § 211 of the Act (D.C. Official Code § 42-3502.11) and § 4211 of this chapter that is approved after October 1, 2018; or

(b) A voluntary agreement under § 215 of the Act (D.C. Official Code § 42-3502.15) and § 4213 of this chapter approved after April 7, 2017.

4215.3 A rent surcharge listed in § 4215.2 may be implemented for a rental unit leased to and occupied by a protected tenant if the protected tenant waives his or her rights under that subsection in a written document that states that the waiver is made voluntarily, without coercion, and with full knowledge of the ramifications of a waiver of their rights.

4215.4 Notwithstanding § 4215.1, a rent surcharge, not including a rent surcharge based on a voluntary agreement, may be implemented for a rental unit leased to and occupied by a protected tenant if the Chief Financial Officer of the District of Columbia determines that funds are not available for the housing provider to receive the tax credit established by § 224(g) of the Act (D.C. Official Code § 42-3502.24(g)).

4215.5 A rent surcharge authorized under § 4215.4 may be implemented by filing and serving a notice of rent adjustment in accordance with §§ 4204 and 4205, which shall include a copy of the Chief Financial Officer's written determination on the availability of funds.

4215.6 Authorization to implement a rent surcharge under § 4215.4 shall not permit a housing provider to increase any rent less than twelve (12) months after any prior increase in the rent charged for the rental unit, as provided by § 4204.1, or during the term of a valid, written lease that establishes the rent charged, as provided by § 4204.14.

4215.7 Authorization to implement a rent surcharge under § 4215.4 shall not permit a housing provider to implement more than one (1) rent adjustment at a time, as provided by § 4204.1, except for any approved and previously implemented rent surcharges for which tax credits have become unavailable.

4215.8 Notwithstanding § 4204.1, after a protected tenant vacates a rental unit, if the unit has become entirely vacant, a housing provider may re-implement any approved and previously implemented rent surcharges for the rental unit in addition to implementing a vacancy adjustment under § 4207.

4215.9 The Commission shall publish before March 1 of each year, in addition to the certifications required by § 4206.3, the maximum annual household income that qualifies for status as a protected tenant. The revised income qualification shall take effect on the same day the annual adjustment of general applicability for the year.

4215.10 A tenant may apply for protected tenant status, for the purposes of this section or for the purposes of § 4206.7 without regard to income, by completing a registration form published by the Rent Administrator and filing it with the Rental Accommodations Division, along with the necessary documentation, as determined by the Mayor in accordance with § 224(d) of the Act (D.C. Official Code § 42-3502.24(d)), to support the claim.

4215.11 The Rent Administrator shall immediately mail notice to the housing provider of a tenant who files a completed application in accordance with § 4215.10, stating the date of the filing and whether the tenant claims to be an elderly tenant, tenant with a disability, or to have a qualifying income.

4215.12 A tenant's protected status shall be effective on the first day of the first month that begins at least five (5) days after the filing of a completed application in accordance with § 4215.10. The protected status shall be and shall remain effective unless and until:

(a) The Rent Administrator issues an order determining that the tenant failed to demonstrate that he or she is an elderly tenant, is a tenant with a disability, or, if required, has a qualifying income; or

(b) The term of the tenant's certification expires as may be determined by the Mayor pursuant to § 224(j) of the Act (D.C. Official Code § 42-3502.24(j)).

4215.13 The housing provider of tenant claiming protected status may file a request that the Rent Administrator deny the tenant's application if:

(a) Thirty (30) days or less has elapsed since the completed application was filed;

(b) The housing provider has substantial grounds to believe that the tenant does not qualify for protected status or that relevant is fraudulent or has been falsified;

(c) The housing provider has contacted and conferred with the tenant in a good faith effort to resolve the dispute; and

(d) The housing provider serves a copy of the request on the tenant prior to or simultaneously with filing the request with the Rent Administrator.

4215.14 The Rent Administrator shall issue an order denying a tenant's completed application for protected status only if:

(a) Thirty (30) days or less has elapsed since the completed application was filed;

(b) The tenant has been given notice that the Rent Administrator has substantial grounds to believe that the tenant does not qualify for protected status and that relevant documentation is fraudulent or has been falsified, and the tenant has been given an opportunity to respond; and

(c) The Rent Administrator finds clear and convincing evidence of error, fraud, falsification, or misrepresentation in the completed application or relevant documentation.

4215.15 If the Rent Administrator finds that an application for protected status should be denied with regard to income but does not find clear and convincing evidence of error, fraud, falsification, or misrepresentation with regard to age or disability, the Rent Administrator shall issue an order denying the application for protected status only for the purposes of rent surcharges as provided in this section but not for the purposes of adjustments of general applicability as provided in § 4206.7.

4215.16 By the effective date of a tenant's protected status without regard to income, a housing provider shall implement a rent rollback as required by § 4206.8.

4215.17 If a housing provider has implemented a rent rollback in accordance with § 4215.16 by the effective date of a tenant's protected status, and the Rent Administrator has subsequently denied the tenant's application, and if the Rent Administrator finds that the tenant acted in bad faith, as defined in § 4217.7, then within twenty-one

(21) days of the denial, the Rent Administrator may order the tenant to pay to the housing provider double the difference between the amount of the rolled-back rent and the otherwise-lawful rent for the rental unit.

4215.18 By the effective date of a tenant's protected status with regard to income, a housing provider shall implement a rent rollback of all surcharges prohibited by this section.

4216 REQUIREMENT TO MAINTAIN SUBSTANTIAL COMPLIANCE WITH HOUSING REGULATIONS

4216.1 Any petition or application for a rent adjustment under §§ 4208 or 4213 shall be filed, and any rent adjustment authorized under §§ 4204 and 4205 shall be implemented, only if each affected rental unit and the common elements of the housing accommodation are in substantial compliance with the Housing Regulations.

4216.2 For purposes of this chapter, "substantial compliance with the Housing Regulations" means the absence of any substantial violations of the Housing Regulations, including the applicable provisions of the Property Maintenance Code. A violation is substantial if its existence may endanger or materially impair the health and safety of any tenant or person occupying the property. Substantial violations shall include, but not be limited to, the following:

(a) Frequent lack of sufficient water supply, in violation of § 505.3 of the Property Maintenance Code;

(b) Frequent lack of hot water, in violation of § 505.4 of the Property Maintenance Code;

(c) Frequent lack of sufficient heat between October 1 and May 1 in violation of § 602.3 of the Property Maintenance Code;

(d) Hazardous electrical systems, including wiring, outlets, and fixtures, in violation of § 604.3 of the Property Maintenance Code;

(e) Exposed electrical wiring or outlets not properly covered, in violation of §§ 605.1 or .2 of the Property Maintenance Code;

(f) Leaks in the roof or walls in violation of §§ 304.6 or .7 of the Property Maintenance Code;

(g) Defective sinks, showers or bathtubs, toilets, drains, or sewage systems, in violation of §§ 504.1 or 506.2 of the Property Maintenance Code;

(h) Infestation of insects or rodents, in violation of § 309 of the Property Maintenance Code;

(i) Actual or presumed lead-based paint on the interior or exterior of the structure or building that is peeling, flaking, or chipped, in violation of §§ 304.2.1 or 305.3.1 of the Property Maintenance Code, including the incorporated regulations of the District of Columbia Department of Energy and the Environment and the U.S. Environmental Protection Agency;

(j) Insufficient number of emergency escape openings or improper arrangement of exits from a dwelling, in violation of § 702.4 or .5 of the Property Maintenance Code;

(k) Obstructed means of egress, in violation of § 702.1, .2, or .3 of the Property Maintenance Code;

(l) Accumulation of garbage or rubbish in common areas, in violation of § 308.1 of the Property Maintenance Code;

(m) Failure to provide approved garbage facilities or containers, in violation § 308.3 of the Property Maintenance Code;

(n) Cracked or loose plaster, decayed wood, or water damage to interior surfaces, in violation of § 305.3 of the Property Maintenance Code;

(o) Hazardous porches, decks, balconies, stairs, ramps, landings, or railings, handrails, or guards to such facilities, in violation of §§ 304.10, 305.4, or 307.1 of the Property Maintenance Code;

(p) Floors, walls between dwelling units, or ceilings with any holes or interior walls of dwelling units with holes equal to or greater than one half inch (1/2") in width, in violation of § 305.4 of the Property Maintenance Code;

(q) Windows, skylights, doors, and frames insufficiently tight to maintain the required temperature or to prevent excessive heat loss, in violation of § 304.13 of the Property Maintenance Code;

(r) Doors lacking required, operative locks, in violation of § 304.15 of the Property Maintenance Code;

(s) Absence of required, operable fire protection systems, including fire extinguishers, in violation of § 704.1 of the Property Maintenance Code;

(t) Violation of any provision of the Property Maintenance Code where such condition constitutes a fire hazard;

(u) Inadequate ventilation of interior bathrooms or toilet rooms, in violation of § 403.2 of the Property Maintenance Code;

(v) Elevators not in operation, in violation of § 606.6 of the Property Maintenance Code;

(w) Indoor mold contamination requiring professional indoor mold remediation under § 305(c) of the Air Quality Amendment Act of 2014 (D.C. Official Code § 8-241.04(c)), regulations of the District of Columbia Department of Energy and the Environment at 20 DCMR § 3200 *et seq.*, and the applicable regulations of the U.S. Environmental Protection Agency;

(x) Failure to provide a utility that is the responsibility of or under the control of the housing provider in the quantities needed for normal occupancy, in violation of 14 DCMR § 600.3; and

(z) A large number of Housing Regulations 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 reviewing a housing provider's petition or application for a rent adjustment for which prior administrative approval is required, 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) All rental units in the housing accommodation have been inspected at the housing provider's request by the Department of Consumer and Regulatory Affairs ("DCRA") within thirty (30) days immediately preceding the date of filing of the petition or application; and

(b) If the inspection performed in accordance with paragraph (a), or any subsequent inspection while the petition or application is pending, results in a citation by DCRA for a substantial violation of the Housing Regulations in a rental unit proposed to be affected by the petition or in the common areas of the housing accommodation, abatement of each substantial violation:

(1) Has occurred within forty-five (45) days of issuance of the citation, or such other time period as DCRA may have required in the citation;

(2) Has been certified by DCRA, or by the housing provider or by each tenant affected by the violation and supporting evidence has been presented to substantiate the certification; and

(3) Each tenant proposed to be affected by the rent adjustment has been given notice of the certification and ten (10) days, from the date the housing provider submits certification of abatement to the Office of

Administrative Hearings, in which to submit objections to the certification of abatement.

4216.4 Where a petition or application for a rent adjustment for which prior administrative approval is required is contested on the grounds that it has been filed while an affected rental unit or housing accommodation is not in substantial compliance with the Housing Regulations, in violation of § 4216.1, the rent adjustment shall not be approved unless the non-compliance has been abated at the time of an evidentiary hearing on the petition.

4216.5 Evidence of substantial violations of the Housing Regulations may be presented at a hearing by notices of violations issued by any District or federal agency with jurisdiction over the particular violation or by the testimony of witnesses, except that no testimony 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 prior to the date of the hearing.

4216.6 Witness testimony may be supported by photographs or other documentary evidence, written government-issued violation notice(s), or the testimony of a government official who has personally inspected the rental property.

4216.7 Testimony and other supporting evidence of violations of the Housing Regulations shall be as detailed as necessary so that the Administrative Law Judge can make findings of fact that identify:

(a) The specific violation and that it is substantial;

(b) The location and duration of the condition alleged to be a violation, and whether it has been abated; and

(c) Whether and when the housing provider had actual or constructive notice of the specific condition alleged to be a violation.

4216.8 A finding of excessive and prolonged Housing Regulations violations pursuant to § 208(a)(2) of the Act (D.C. Official Code § 42-3502.08(a)(2)) shall be based upon findings as provided in § 4216.7; provided, that a rent rollback authorized by § 208(a)(2) shall not be ordered if the violations have been abated.

4216.9 Unsuccessful efforts by a housing provider to abate a substantial violation of the Housing Regulations shall not constitute a defense to a claim based on the existence of the violation.

4216.10 In addition to § 4216.1, a housing provider's failure to promptly abate a substantial violation of the Housing Regulations, where the violation is not the result of tenant neglect or misconduct, shall also constitute a reduction in related services under § 211 of the Act (D.C. Official Code § 42-3502.11) and § 4211 of this chapter.

4217 ENFORCEMENT, REMEDIES, AND PENALTIES

4217.1 If it is determined, pursuant to a tenant petition filed in accordance with § 4214, that a housing provider knowingly demanded or received rent for a rental unit greater than the amount lawfully calculated and filed or required to be filed with the Rental Accommodations Division, or knowingly substantially reduced or eliminated related services or facilities required by law or without prior administrative approval, the Rent Administrator, Office of Administrative Hearings, Commission, or a court of competent jurisdiction shall order the housing provider to:

(a) Pay to the tenant a rent refund in the amount of:

(1) The rent charged in excess of the lawfully calculated and properly filed amount of rent that may be charged for the rental unit; or

(2) The monthly value of the related service or facility that has been substantially reduced or eliminated, over the duration of the reduction or elimination; or

(b) Implement a rent rollback in the amount of:

(1) Any unlawful rent adjustment, until an authorized rent adjustment is implemented in accordance with this chapter; or

(2) The value of the related service or facility that has been substantially reduced or eliminated, until the service or facility is restored.

4217.2 A rent refund under § 4217.1(a) shall be trebled if detailed findings of fact are made that the housing provider acted in bad faith.

4217.3 Interest may be imposed on a rent refund or trebled refund ordered pursuant to §§ 4217.1(a) or 4217.2 by the Office of Administrative Hearings, or the Commission on appeal, and shall be calculated in accordance with § 3826.

4217.4 Where it has been determined that any person has committed any violation of the Act, Chapters 41 through 44 of this title, or any order of the Rent Administrator, Office of Administrative Hearings, or the Commission, or has made a false statement in any document filed pursuant to the Act or Chapters 38 through 44 of this title, civil fines of not more than $5,000 per violation may be imposed by the Rent Administrator, Office of Administrative Hearings, or the Commission the person acted willfully.

4217.5 Where a party has failed to comply with an order of the Rent Administrator, the Office of Administrative Hearings, or the Commission, the Rent Administrator, the Commission, or any adversely affected tenant or housing provider is authorized to

commence a civil action in the Superior Court of the District of Columbia for enforcement pursuant to § 218 of the Act (D.C. Official Code § 42-3502.18), or a tenant may file an application for entry of the final order as a judgment in accordance with Superior Court Civil Rule 12-I(b)(1)(G).

4217.6 A housing provider shall be found to have acted knowingly where the housing provider had knowledge of the essential facts that bring the conduct within the purview of the Act.

4217.7 A housing provider shall be found to have engaged in sufficiently egregious conduct to warrant a finding of bad faith where the housing provider deliberately failed to perform a duty without a reasonable excuse, heedlessly disregarded a duty, or had a dishonest intent or sinister motive in the performance of an act or the failure to perform a duty.

4217.8 A person shall be found to have acted willfully where specific findings of fact are made that the person intended to violate the legal obligations enumerated in § 4217.4 or was at least aware of the resulting legal consequences of the conduct.

4217.9 Rent refunds ordered pursuant to § 4217.1(a) may be awarded for unlawful rents charged or reductions in services or facilities that continue past the date the tenant petition is filed, where evidence on the record shows that the tenant continues to reside in the rental unit and that the violation continues, through no later than the date the evidentiary record in a tenant petition closes.

4217.10 An order to implement a rent rollback pursuant to § 4217.1(b) shall be effective ten (10) business days after the date it is issued, plus five (5) days if served on the housing provider by U.S. mail, or if the order is stayed by the filing of an appeal in accordance with § 3805, the same number of days from the date the order is affirmed by the Commission.

4217.11 Appeals of fines imposed in accordance with § 901(f) of the Act (D.C. Official Code § 42-3509.01(f)) and the DCRA Civil Infractions Act of 1985 (D.C. Law 6-42; D.C. Official Code §§ 2-1801.01 *et seq.*) ("Civil Infractions Act") shall be reviewed by the Commission pursuant to § 301 of the Civil Infractions Act (D.C. Official Code § 2-1803.01) and in accordance with Chapter 38 of this title.

4217.12 A party that prevails on a contested petition or application filed under the Act may be awarded attorney's fees in accordance with § 3825.

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 The provisions of § 3816 of Chapter 38 of this title shall be applicable to the calculation of any time periods provided by this chapter.

CHAPTER 43: EVICTIONS, RETALIATION, AND TENANT RIGHTS

4300 GROUNDS FOR EVICTION

4300.1 A tenant of a rental unit covered by the Act, as provided in § 4100.3, shall not be evicted from the rental unit except:

(a) For nonpayment of rent or any other reason listed in § 4300.2; or

(b) After the service of a notice that complies with §§ 4301 or 4302, for the following reasons as described in § 501 of the Act (D.C. Official Code § 42-3505.01) and this section:

(1) For violation of an obligation of tenancy, pursuant to § 501(b) of the Act (D.C. Official Code § 42-3505.01(b));

(2) For performance of an illegal act on the premises, pursuant to § 501(c) of the Act (D.C. Official Code § 42-3505.01(c));

(3) For personal use and occupancy by the owner of the rental unit, pursuant to § 501(d) of the Act (D.C. Official Code § 42-3505.01(e));

(4) For personal use and occupancy of a purchaser of the rental unit, pursuant to § 501(e) of the Act (D.C. Official Code § 42-3505.01(e));

(5) For unsafe alterations or renovations, pursuant to § 501(f) of the Act (D.C. Official Code § 42-3505.01(f));

(6) For demolition of the housing accommodation, pursuant to § 501(g) of the Act (D.C. Official Code § 42-3505.01(g));

(7) For substantial rehabilitation, pursuant to §§ 214 and 501(h) of the Act (D.C. Official Code §§ 42-3502.14 & 42-3505.01(h))

(8) For discontinuation of housing use and occupancy, pursuant to § 501(i) of the Act (D.C. Official Code § 42-3505.01(i)); or

(9) For closure of a building by order of the Department of Consumer and Regulatory Affairs, pursuant to § 501(n) of the Act (D.C. Official Code § 42-3505.01(n)) and § 103 of this title or § 108 of the District of Columbia Property Maintenance Code (12-G DCMR § 108).

4300.2 Nothing in this section or §§ 4301 or 4302 shall apply to the eviction of a tenant:

(a) For the nonpayment of rent;

(b) By the District of Columbia Housing Authority that is subject to the requirements of § 6404 of this title;

(c) In an action brought in accordance with the Residential Drug-related Evictions Re-enactment Act of 2000 (D.C. Law 13-172; D.C. Official Code §§ 42-3601 *et seq.*); or

(d) For the purpose of converting the rental unit or housing accommodation to condominium or cooperative housing use, which is subject to the requirements of the Conversion of Rental Housing to Condominium or Cooperative Status Act of 1980 (D.C. Law 3-86; D.C. Official Code §§ 42-3402.01 *et seq.*) and § 4705 of this title.

4300.3 The expiration of the term of a lease for a rental unit covered by the Act shall not, by itself, entitle a housing provider to evict a tenant from the rental unit.

4300.4 No action or proceeding to evict a tenant shall be filed by a housing provider until the expiration of the time required for the type of eviction being sought by the applicable subsections of § 501(b) through (i) of the Act (D.C. Official Code § 42-3505.01(b)-(i)) and stated in a notice served in accordance with §§ 4301 or 4302.

4300.5 Any notice served on a tenant pursuant to § 501(b) through (i) of the Act (D.C. Official Code §42-3505.01(b)-(i)) shall also be filed with the Rent Administrator, in accordance with § 3901 of this title, no later than five (5) days after service on the tenant and shall include a certification that the tenant was served and by what means. The Rent Administrator shall review each notice promptly and may:

(a) Issue an order disapproving and voiding the notice if he or she finds that the notice is defective on its face or in conjunction with any supporting documentation; or

(b) Issue a show cause order in accordance with § 3926 if he or she finds substantial grounds to believe that possible violations of the Act or this chapter have occurred.

4300.6 A tenant may be evicted pursuant to § 501(b) of the Act (D.C. Official Code § 42-3505.01(b)) for the reason that the tenant is violating an obligation of tenancy, as defined in § 4301.2, if the tenant is notified in writing of and is given the opportunity to correct the violation, in accordance with § 4301 of this chapter.

4300.7 A tenant may be evicted pursuant to § 501(c) through (i) of the Act (D.C. Official Code § 42-3505.01(c)-(i)) for one of the reasons provided in those subsections if the tenant is served with a written notice that meets each requirement listed in § 4302 of this chapter that applies to type of eviction being sought.

4300.8 A housing provider shall not serve a notice pursuant to § 501(c) of the Act (D.C. Official Code § 42-3505.01(c)) (illegal act within premises) until a court of competent jurisdiction has made a final determination that a tenant has performed an illegal act within the rental unit or housing accommodation occupied by the tenant, no appeal is pending, and the time for appeal has expired.

4300.9 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 only for the immediate and personal use and occupancy of the rental unit. 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)).

4300.10 A housing provider shall not serve a notice pursuant to § 501(e) of the Act (D.C. Official Code § 42-3505.01(e)) (purchaser's personal use and occupancy) until the housing provider has given the tenant the opportunity to purchase provided by the Tenant Opportunity to Purchase Act of 1980 (D.C. Law 3-86; D.C. Official Code §§ 42-3404.01 *et seq.*) ("TOPA"), if required.

4300.11 A housing provider shall not serve a notice pursuant to §§ 501(f), (g), (h) or (i) of the Act ((D.C. Official Code § 42-3505.01(f), (g), (h), or (i)) based on the plans or intent of a purchaser, or other future housing provider, of a rental unit or housing accommodation to alter or renovate, demolish, substantially rehabilitate, or discontinue rental housing use of the rental unit or housing accommodation. For example, a housing provider shall not evict tenants because the housing provider has initiated the sale of a housing accommodation to another housing provider who intends to demolish the accommodation.

4300.12 A housing provider shall not serve a notice pursuant to § 501(f) of the Act (D.C. Official Code § 42-3505.01(f)) (unsafe alterations or renovations) without the prior approval of the Rent Administrator, granted through an approved application filed in accordance with that subsection.

4300.13 Any notice that seeks to evict a tenant pursuant to § 501(g) of the Act (D.C. Official Code § 42-3505.01(g)) (demolition), when filed with the Rent Administrator, shall be accompanied by a copy of the demolition permit issued by the Department of Consumer and Regulatory Affairs and a certification that the tenant has been given the opportunity to purchase provided by TOPA, if required.

4300.14 A housing provider shall not serve a notice pursuant to § 501(h) of the Act (D.C. Official Code § 42-3505.01(h)) (substantial rehabilitation) without the prior approval of the Office of Administrative Hearings granted through a substantial rehabilitation petition, filed in accordance with § 4212 of this title.

4300.15 Any notice that seeks to evict a tenant pursuant to § 501(i) of the Act (D.C. Official Code § 42-3505.01(i)) (discontinuance of use), when filed with the Rent Administrator, shall be accompanied by a certification that the tenant has been given the opportunity to purchase provided by TOPA, if required, and a statement, on a form published by the Rent Administrator, that includes general information about the housing accommodation, including the address and number of rental units, the reason for the discontinuance of use, and any future plans for the property.

4300.16 The displacement of a tenant by administrative order due to unsafe premises shall not be deemed an eviction by a housing provider, shall not terminate a lawful tenancy until the unit has been offered for reoccupation to the tenant and the tenant has waived that right, and shall be carried out in accordance with § 103 of this title, § 108 of the District of Columbia Property Maintenance Code (12-G DCMR § 108), and § 501(n) of the Act (D.C. Official Code § 42-3505.01(n)).

4300.17 In addition to any other remedies provided by law, a tenant may file a tenant petition in accordance with § 4214.9(a) to complain of and seek relief for any violation of this section, including compliance with the requirements of §§ 4301 or 4302.

4301 NOTICES TO CORRECT VIOLATION OF TENANCY OR TO VACATE

4301.1 If a housing provider seeks to evict a tenant from a rental unit pursuant to § 501(b) of the Act (D.C. Official Code § 42-3505.01(b)) because the tenant is violating an obligation of tenancy, the housing provider shall first serve the tenant with a written notice directing the tenant to correct the violation or vacate the rental unit within thirty (30) days of service ("Notice to Correct or Vacate").

4301.2 For the purposes of this chapter, an "obligation of tenancy" means only a substantial obligation that is contained in a valid lease, not including the obligation to pay the

amount of rent specified in the lease, or a substantial obligation that is imposed on a tenant by the Housing Regulations.

4301.3 A housing provider shall not serve a Notice to Correct or Vacate based on a violation of an obligation of tenancy that has occurred more than six (6) months earlier than the date of service.

4301.4 A Notice to Correct or Vacate shall state:

(a) The factual basis for the housing provider's belief that the tenant is violating an obligation of tenancy, in sufficient detail to allow a reasonable person in the circumstances to know what allegedly occurred, including specific reference to the provision of the lease or Housing Regulations that create the obligation and to § 501(b) of the Act (D.C. Official Code § 42-3505.01(b));

(b) The specific action(s) the tenant needs to take to correct the violation, in sufficient detail to allow a reasonable person in the circumstances to know how to comply with the directive(s);

(c) That the housing provider may file an action in court to evict the tenant if the violation has not been corrected thirty (30) days after the service of the Notice to Correct or Vacate;

(d) The registration or exemption number for the rental unit or housing accommodation, as provided by the Rent Administrator in accordance with § 4102 of this title and, if the rental unit or housing accommodation is exempt from the Rent Stabilization Program, the basis for the exemption; and

(e) That a copy of the Notice to Correct or Vacate is being filed with the Rent Administrator, including the address and telephone number of the Rental Accommodations Division.

4301.5 A Notice to Correct or Vacate shall also state that:

(a) The tenant may not have to vacate the unit if the violation of the obligation of tenancy set forth pursuant to § 4301.4(a) is related to a criminal offense committed or threatened against the tenant or the tenant's minor child that is an intrafamily offense by D.C. Official Code § 16-1001(8), which may include violence by a partner, relative, roommate, or other person with a close relationship to the victim; and

(b) The D.C. Office of Human Rights may be able to assist a tenant described in paragraph (a), and shall include contact information for that agency.

4301.6 A Notice to Correct or Vacate shall be signed by the housing provider or the housing provider's agent. If the Notice is signed by an agent, service on the agent of any complaints, orders, or other documents with respect to the Notice shall be deemed service on the housing provider.

4301.7 A Notice to Correct or Vacate shall be served on each tenant who is demanded to vacate a rental unit in accordance with D.C. Official Code § 42-3206.

4302 NOTICES TO VACATE FOR OTHER REASONS

4302.1 In order to be valid, a notice to vacate for any reason listed in §§ 501(c) through (i) of the Act (D.C. Official Code § 42-3505.01(c)-(i)) ("Notice to Vacate") shall state:

(a) The factual basis the housing provider relies on, in sufficient detail to allow a reasonable person in the circumstances to know what allegedly occurred, and the specific subsection of § 501 of the Act (D.C. Official Code § 42-3505.01) that the eviction is based on;

(b) That the housing provider may file an action in court to evict the tenant if the tenant does not vacate within the time provided by § 4302.2 after the service of the notice;

(c) The registration or exemption number for the housing accommodation, as provided by the Rent Administrator in accordance with § 4102 of this title and, if the rental unit or housing accommodation is exempt from the Rent Stabilization Program, the basis for the exemption; and

(d) That a copy of the Notice to Vacate is being filed with the Rent Administrator, including the address and telephone number of the Rental Accommodations Division.

4302.2 A housing provider shall not file an action in court to evict a tenant until the expiration of the following time periods, counted from the date of service of a Notice to Vacate:

(a) If the Notice to Vacate is served pursuant to § 501(c) of the Act (D.C. Official Code § 42-3505.01(c)) (illegal act within premises), no less than thirty (30) days;

(b) If the Notice to Vacate is served pursuant to § 501(d) of the Act (D.C. Official Code § 42-3505.01(d)) (housing provider's personal use and occupancy), no less than ninety (90) days;

(c) If the Notice to Vacate is served pursuant to § 501(e) of the Act (D.C. Official Code § 42-3505.01(e)) (purchaser's personal use and occupancy), no less than ninety (90) days;

(d) If the Notice to Vacate is served pursuant to an approved application under § 501(f) of the Act (D.C. Official Code § 42-3505.01(f) (unsafe alterations or renovations), no less than one hundred twenty (120) days before the date set forth in the timetable approved by the Rent Administrator;

(e) If the Notice to Vacate is served pursuant to § 501(g) of the Act (D.C. Official Code § 42-3505.01(g)) (demolition), no less than one hundred eighty (180) days;

(f) If the Notice to Vacate is served pursuant to an approved application under § 501(h) of the Act (D.C. Official Code § 42-3505.01(h)) and § 4212 of this title (substantial rehabilitation), no less than one hundred twenty (120) days; provided, that the expiration of this time shall be no earlier than the time set forth in the timetable approved by the Office of Administrative Hearings; or

(g) If the Notice to Vacate is served pursuant to § 501(i) of the Act (D.C. Official Code § 42-3505.01(i)) (discontinuance of use), no less than one hundred eighty (180) days.

4302.3 If a Notice to Vacate is served pursuant to § 501(c) of the Act (D.C. Official Code § 42-3505.01(c)) (illegal act within premises), it shall also contain the following:

(a) The name of the court of competent jurisdiction that determined an illegal act was committed;

(b) The date of the order in which the determination was made;

(c) The case number of the proceeding in which the order was issued;

(d) That the court's determination shows that the tenant knew or should have known that the illegal act was committed; and

(e) Statements that:

(1) The tenant may not have to vacate the unit if the illegal act set forth pursuant to § 4201.1(a) is related to a criminal offense committed or threatened against the tenant or the minor child that is an intrafamily offense by D.C. Official Code § 16-1001(8), which may include violence by a partner, relative, roommate, or other person with a close relationship to the victim; and

(2) The D.C. Office of Human Rights may be able to assist a tenant described in subparagraph (1) and shall include contact information for that agency.

4302.4 If a Notice to Vacate is served pursuant to §§ 501(f) (unsafe alterations or renovations), (g) (demolition), (h) (substantial rehabilitation), or (i) (discontinuance of use) (D.C. Official Code §§ 42-3505.01(f), (g), (h), or (i)), it shall also contain the following statements:

(a) That the law requires the housing provider to pay the tenant relocation assistance, and the amount of relocation assistance due in accordance with §§ 703(a) or (b) of the Act (D.C. Official Code §§ 42-3507.03(a) or (b)) and § 4401.6 of this title;

(b) That, in accordance with § 703(c) of the Act (D.C. Official Code § 42-3507.03(c)) and § 4401.7 of this title, if the tenant gives the housing provider at least ten (10) business days advance, written notice of the date on which the tenant will vacate the rental unit, the tenant will be paid relocation assistance no later than twenty-four (24) hours before the date the tenant will vacate the rental unit, or, if notice is not provided, within thirty (30) days after the tenant vacates the rental unit; and

(c) That if the tenant fails to pay rent between the date of the service of the Notice to Vacate and expiration of the applicable time period stated in the Notice to Vacate, the tenant may be evicted in a shorter time period or may lose all or a part of the relocation assistance due.

4302.5 If a Notice to Vacate is served pursuant to § 501(f) of the Act (D.C. Official Code § 42-3505.01(f)) (unsafe alterations or renovations), it shall be in the languages as required for a vital document by § 4 of the Language Access Act of 2004 (D.C. Law 15-167; D.C. Official Code § 2-1933), and shall also include the following:

(a) A statement that the tenant has an absolute right to re-rent the rental unit immediately after the alteration or renovation is completed, and what the rent will be if that right is exercised;

(b) A list of sources of technical assistance, as published in the D.C. Register; and

(c) The notice issued by the Office of the Tenant Advocate pursuant to § 501(f)(1)(C)(iii)(II) of the Act (D.C. Official Code § 42-3505.01(f)(1)(C)(iii)(II)) upon approval of the application by the Rent Administrator that includes the address and telephone number of the Office of the Tenant Advocate, an explanation of the right to maintain his or her tenancy and, if applicable, rent level, and an explanation of the need to keep the Office of the Tenant Advocate informed of the tenant's interim addresses.

4302.6 If a Notice to Vacate is served pursuant to § 501(h) of the Act (D.C. Official Code § 42-3505.01(h)) and § 4212 of this title (substantial rehabilitation), it shall also contain the following information:

(a) A statement that the tenant has an absolute right to re-rent the rental unit immediately after the substantial rehabilitation is completed, and what the rent will be if the right to re-rent is exercised;

(b) The petition number and date of the final order by which approval for the Notice to Vacate and any rent adjustment was approved; and

(c) The address and telephone number of the Office of the Tenant Advocate and an explanation of the need to keep the Office of the Tenant Advocate informed of the tenant's interim address.

4302.7 A Notice to Vacate shall be signed by the housing provider or the housing provider's agent. If the Notice is signed by an agent, service on the agent of any complaints, orders, or other documents with respect to the Notice shall be deemed service on the housing provider.

4302.8 A Notice to Vacate shall be served on a tenant of a rental unit in accordance with D.C. Official Code § 42-3206.

4303 RETALIATION

4303.1 A housing provider shall not take an action against a tenant, as provided in § 4303.2, with the intent to injure or get back at a tenant in response to the tenant's exercise of any right conferred upon the tenant by law ("retaliatory intent").

4303.2 Actions against a tenant that may be prohibited by § 4303.1 include, but are not limited to:

(a) Any action or proceeding not otherwise permitted by law which seeks to recover possession of a rental unit;

(b) Action which would unlawfully:

(1) Increase rent;

(2) Decrease or reduce the quality or quantity of services or facilities;

(3) Increase the obligations of the tenant or constitute undue or unavoidable inconvenience in meeting an obligation;

(4) Violate the privacy of the tenant; or

(5) Harass the tenant;

(c) Any refusal to honor a lease or rental agreement or any provision of a lease or rental agreement;

(d) Refusal to renew a lease or rental agreement;

(e) Termination of a tenancy without cause; or

(f) Any other form of threat or coercion.

4303.3 There shall be a rebuttable presumption that an action against a tenant by a housing provider is taken with retaliatory intent if the action is taken within six (6) months following the tenant's exercise of his or her legal rights in the following ways:

(a) Making a request to the housing provider, either orally in the presence of a witness or in writing, to make repairs that are necessary to bring the housing accommodation or the rental unit the tenant occupies into compliance with the Housing Regulations;

(b) Contacting 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 reporting to the officials suspected violations which, if confirmed, would render the rental unit or housing accommodation in noncompliance with the Housing Regulations;

(c) Legally withholding 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;

(d) Organizing, being a member of, or being involved in any lawful activities pertaining to a tenant organization, as provided in § 4304;

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

(f) Bringing legal action against the housing provider.

4303.4 A presumption of retaliatory intent pursuant to § 4303.3 shall be rebutted only by the production of clear and convincing evidence by the housing provider that the action was taken without retaliatory intent.

4303.5 Where a housing provider is found to have violated § 4303.1, the Office of Administrative Hearings may order the housing provider, in addition to any other

penalty prescribed by law, to cease and desist from taking such action, under such terms and conditions as the Office of Administrative Hearings may prescribe.

4304 TENANT RIGHTS TO ORGANIZE

4304.1 In accordance with § 506 of the Act (D.C. Official Code § 42-3505.06), every tenant in a housing accommodation covered by the Act, as provided by § 4100.3, shall have the right to:

(a) Self-organize;

(b) Form, join, meet, or assist one another within and without tenant organizations;

(c) Meet and confer through representatives of their own choosing with a housing provider;

(d) Engage in other concerted activities for the purpose of mutual aid and protection; and

(e) Refrain from such activity.

4304.2 A tenant organizer who is not a tenant shall have the privilege and right of access to a multifamily housing accommodation as follows:

(a) If the multifamily housing accommodation has a written policy that permits canvassing by uninvited, outside parties in the normal course of operations, or if the multifamily housing accommodation lacks a written and consistently enforced policy regarding canvassing, the tenant organizer shall be afforded the same privileges and rights afforded to other uninvited, outside parties; or

(b) If the multifamily housing accommodation has a written and consistently enforced policy that prohibits canvassing by uninvited, outside parties in the normal course of operations, the tenant organizer, when accompanied by a tenant, shall be afforded the same privileges and rights afforded generally to invited, outside parties in the normal course of operations.

4304.3 A housing provider of a multifamily housing accommodation shall not interfere with any of the following activities by a tenant or tenant organizer because the activity relates to the rights enumerated in § 4304.1:

(a) Distributing literature in common areas, including lobby areas;

(b) Placing literature at or under tenants' doors;

(c) Posting information on all building bulletin boards;

(d) Assisting tenants to participate in tenant organization activities;

(e) Convening tenant or tenant organization meetings at any reasonable time and in any appropriate space that would reasonably be interpreted as areas that the tenant had access to under the terms of his or her lease, including any tenant's unit, a community room, a common area including a lobby, or other available space; provided, that an owner or agent of owner shall not attend or make audio recordings of such meetings unless permitted to do so by the tenant organization, if one exists, or by a majority of tenants in attendance, if a tenant organization does not exist;

(f) Formulating responses to housing provider actions, including:

(1) Rent increases, requests or demands for rent increases, or the implementation of, or petitions or applications for administrative approval of, increases in the Registered Rent Charged under the Rent Stabilization Program;

(2) Proposed increases, decreases, or other changes in the housing accommodation's facilities and services; and

(3) Conversion of residential units to nonresidential use, cooperative housing, or condominiums;

(g) Proposing that the housing provider modify the housing accommodation's facilities and services; and

(h) Any other activity reasonably related to the establishment or operation of a tenant organization.

4304.4 This section may be enforced by the filing of a tenant petition in accordance with § 4214, by the issuance of a show cause order in accordance with § 3926, or by order of a court of competent jurisdiction.

4304.5 Without limitation to any additional remedy as may be provided by a court of competent jurisdiction, if, after a hearing before the Office of Administrative Hearings on a tenant petition or show cause order, it is determined that a housing provider knowingly violated § 506 of the Act (D.C. Official Code § 42-3505.06) or this section, the housing provider may be ordered to:

(a) Pay a civil fine, in accordance with § 4304.6 of this section;

(b) Implement a rent rollback and pay a rent refund to a tenant if the provisions of the Rent Stabilization Program have been violated, including as provided by § 4304.7, in accordance with § 4217 of this title;

(c) Pay reasonable attorney's fees, in accordance with § 3825 of this title; or

(d) Cease and desist from the violation.

4304.6 A civil fine imposed pursuant to § 4304.5(a) shall not exceed the product of:

(a) Ten thousand dollars ($10,000); multiplied by

(b) The quotient of:

(1) The CPI-U for the year preceding the violation; divided by

(2) CPI-U for the year 2006, which was two hundred and nine (209.1).

4304.7 If, after a hearing before the Office of Administrative Hearings on a tenant petition or show cause order, it is determined that a housing provider knowingly violated § 506 of the Act (D.C. Official Code § 42-3505.06) or this section, the Office of Administrative Hearings may deem the registration requirements of Chapter 41 of this title to be unmet for the subject housing accommodation during any period of time for which the violation was ongoing or recurring. A rent rollback and refund may be ordered pursuant to § 4304.5(b) for any resulting violations of the Rent Stabilization Program during that period.

4304.8 For the purposes of this section, the term "knowingly" shall have the same meaning ascribed in § 4217.6.

4305 TERMINATION OF LEASE BY VICTIM OF INTRAFAMILY OFFENSE

4305.1 Pursuant to § 507 of the Act (D.C. Official Code § 42-3505.07), a housing provider shall release a tenant from the obligations of the tenant's lease or rental agreement if the tenant gives written notice, in any form, to the housing provider that the tenant is a victim or the parent or guardian of a victim of an intrafamily offense or actions related to an intrafamily offense.

4305.2 Written notice to a housing provider of the termination of a lease or rental agreement in accordance with § 4305.1 shall be accompanied by either:

(a) A copy of a protection order issued by a court pursuant to D.C. Official Code § 16-1005; or

(b) Signed documentation by a qualified third party, showing that the tenant reported the intrafamily offense to the qualified third party in his or her official capacity.

4305.3 The release of a tenant from a lease or rental agreement as required by § 4305.1 shall be effective upon the earlier of:

(a) Fourteen (14) days from the receipt of the written notice and documentation described in § 4305.2; or

(b) The commencement of a new tenancy for the tenant's rental unit.

4305.4 A housing provider shall not demand or receive, and a tenant shall not be liable for:

(a) Any amount of rent in excess of the rent due under the lease or rental agreement, pro-rated to the effective date of the release in accordance with § 4305.3; or

(b) Any penalty provided by the lease or rental agreement.

4305.5 A housing provider shall be deemed to have demanded rent in violation of § 4305.4(a) if the housing provider:

(a) Communicates at any time to the tenant that the housing provider will not release the tenant from the rental agreement as required by § 4305.1; or

(b) Does not respond to the written notice of the lease termination as described in § 4305.2 within the time provided by § 4305.3(a).

4305.6 A communication under § 4305.5(a) shall be deemed to be a unlawful demand for the entire, outstanding amount of rent due for the duration of the lease or rental agreement; provided, that a housing provider may mitigate the damages arising from the demand by proving, in a proceeding under § 4305.8, that the tenant has been released from the rental agreement prior to its expiration.

4305.7 The release of a tenant from a lease or rental agreement as required by § 4305.1 shall not relieve the tenant of liability for any amount of unpaid rent or other sums owed to the housing provider that became due before the effective date of the release as provided by § 4305.3.

4305.8 A tenant may file a tenant petition in accordance with § 4214.9 to contest the demand for or receipt of rent in violation of § 4305.4 and may obtain a rent refund based on the amount by which the rent demanded or received by the housing provider exceeded the amount permitted by § 4305.7, whether or not the rental unit is covered by the Rent Stabilization Program. A prevailing party on a petition may be awarded attorney's fees in accordance with § 3825.

4305.9 A housing provider shall have the burden of proof in any proceeding under § 4305.8 as to the amount of rent or other sums owed, if any, by a tenant under § 4305.7.

4305.10 Nothing in this section shall affect the regulation of security deposits as provided by §§ 308-311 of this title.

4306 LATE FEES

4306.1 No late fee shall be charged to a tenant of a rental unit covered by the Act unless a valid, written lease for the tenant's rental unit explicitly states:

(a) The grace period after the regular due date of the rent by which the rent due must be paid to avoid a late fee, in accordance with § 4306.2; and

(b) The maximum amount the late fee that may be charged, in accordance with § 4306.3.

4306.2 No late fee shall be charged to a tenant if full payment of the rent is made within five (5) days of the date on which it is due, or any longer grace period as may be provided in the lease for the rental unit.

4306.3 No lease shall provide for a late fee in excess of five percent (5%) of the rent that is due on a particular date.

4306.4 No late fee shall be charged to a tenant for the late payment or nonpayment of any portion of the rent charged for a rental unit that a rent subsidy provider, rather than the tenant, is responsible for paying.

4306.5 If a late fee is charged to a tenant, the housing provider shall not:

(a) Charge the tenant interest on the late fee;

(b) Deduct any amount from a subsequent rent payment as payment of the late fee;

(c) Charge more than one late fee for a particular overdue rent payment;

(d) Evict the tenant on the basis of the nonpayment of the late fee;

(e) Impose a late fee on a tenant for nonpayment of rent or any portion of rent that a rent subsidy provider, rather than the tenant, is responsible for paying; or

(f) Impose a late fee on a tenant during any month for which a public health emergency has been declared pursuant to D.C. Official Code § 7-2304.01.

4306.6 If a housing provider serves a tenant notice to vacate a rental unit or otherwise initiates proceedings to evict the tenant based, in whole or in part, on the nonpayment of a late fee, the late fee shall be deemed invalid, effective on the date it was charged; provided, that nothing in this subsection shall prevent a housing provider from joining an action for possession based on unpaid rent with an action on a debt based on unpaid late fees.

4306.7 A housing provider may deduct an allowable, unpaid late fee from the tenant's security deposit at the end of a tenancy, in accordance with § 309 of this title, if the housing provider, after the grace period provided by § 4306.2, issues an invoice to the tenant providing thirty (30) days for the payment of the late fee and the late fee is not received within that time.

4306.8 If a housing provider knowingly or willfully demands or receives a late fee in excess of the amount stated in the tenant's lease or the amount allowed by this section, or knowingly or willfully charges a late fee that is not allowed by this section, the housing provider shall be liable to the tenant for the amount by which the late fee demanded or received exceeds the allowable late fee.

4306.9 A housing provider's liability under § 4306.8 shall be trebled if detailed findings of fact are made that the housing provider acted in bad faith.

4306.10 A housing provider that is found liable under § 4306.8 shall, in addition, be subject to a civil fine of not less than one hundred dollars ($100) and not more than five thousand dollars ($5,000) for each late fee unlawfully charged.

4306.11 For the purposes of this section, the terms "knowingly," "bad faith," and "willfully" shall have the same meaning as provided in §§ 4217.6, 4217.7, and 4217.8, respectively.

4306.12 This section may be enforced by the filing of a tenant petition in accordance with § 4214, by the issuance of a show cause order in accordance with § 3926, or by order of a court of competent jurisdiction, and attorney's fees may be awarded in accordance with § 3825

4399 DEFINITIONS

4399.1 The provisions of § 3899 of Chapter 38 of this title and the definitions set forth in that section shall be applicable to this chapter.

4399.2 In addition to § 4399.1, the following terms shall have the meanings set forth below:

CPI-U – the average of the bi-monthly publications of the Consumer Price Index for All Urban Consumers for All Items for the Washington-Arlington-Alexandria, DC-MD-VA-WV, Core Based Statistical Area during the twelve (12) month period ending on November 30 of a given year, as published by the United States Department of Labor, Bureau of Labor Statistics.

Multifamily housing accommodation – a housing accommodation covered by the Act, as provided in § 4100.3 of Chapter 41 of this title, consisting of two (2) or more rental units that is owned or operated by a single housing provider.

Tenant organization – a tenant association, the tenants of a housing accommodation acting jointly as provided by § 410 of the Tenant Opportunity to Purchase Act of 1980 (D.C. Law 3-86; D.C. Official Code § 42-3404.10) ("TOPA"), a tenant organization as provided in § 411 of TOPA (D.C. Official Code § 42-3404.11), or any other continuing agreement between the tenants of two (2) or more rental units covered by the Act to support the exercise of any legal rights as tenants.

Tenant organizer – a person, who may or may not be a tenant, who assists tenants of a multifamily housing accommodation in establishing and operating a tenant organization, and who is not an employee, representative, or other agent of the housing provider, or of a prospective housing provider or owner of the property.

Qualified third party – any of the following persons acting in their official capacity:

(1) A sworn officer of the Metropolitan Police Department of the District of Columbia, in accordance with D.C. Official Code § 4-1301.02(15);

(2) A sworn officer of the District of Columbia Housing Authority Office of Public Safety;

(3) A health professional licensed under or permitted by District of Columbia law to practice a health occupation in the District of Columbia in accordance with D.C. Official Code § 3-1201.01(8); or

(4) A domestic violence counselor who is an employee, contractor, or volunteer of a domestic violence program, in accordance with D.C. Official Code § 14-310(2).

CHAPTER 44: DEMOLITION, CONVERSION, AND RELOCATION ASSISTANCE

SECTION

4400 DEMOLITION AND CONVERSION

4400.1 If a housing provider requests a permit to demolish a housing accommodation by filing an application with the Department of Consumer and Regulatory Affairs, a copy of the application shall be filed with the Rent Administrator.

4400.2 The housing provider shall file with the Rent Administrator, along with the copy of a permit application, a certification that, in accordance with § 602 of the Act (D.C. Official Code § 42-3506.02), the demolition is not for the purpose of constructing or expanding a hotel, motel, inn, or other structure used primarily for transient residential occupancy.

4400.3 The Rent Administrator shall determine whether the demolition is prohibited by § 602 of the Act (D.C. Official Code § 42-3506.02) and shall notify the Department of Consumer and Regulatory Affairs of the determination.

4400.4 If the housing provider fails to comply with the requirements of this section, or if a demolition is prohibited by § 602 of the Act (D.C. Official Code § 42-3506.02), the Rent Administrator shall request that the demolition permit be denied or revoked by the District.

4400.5 Pursuant to § 601 of the Act (D.C. Official Code § 42-3506.01), no housing provider shall convert any housing accommodation or rental unit into a hotel, motel, inn, or other transient residential occupancy unit or accommodation.

4400.6 The Rent Administrator may issue a notice of non-compliance pursuant to § 3927 of this title or take all other necessary and appropriate measures to ensure compliance with § 601 of the Act (D.C. Official Code § 42-3506.01) and § 4400.5 of this section.

4401 RELOCATION ASSISTANCE

4401.1 Each tenant displaced by actions taken under §§ 501(f), (g), (h), or (i) of the Act (D.C. Official Code §§ 42-3505.01(f), (g), (h), or (i)) shall receive a monetary payment of relocation assistance from the housing provider pursuant to the provisions of Title VII of the Act (D.C. Official Code §§ 42-3507.01 *et seq.*).

4401.2 A tenant to be displaced under one of the provisions listed in § 4401.1 shall receive notice of the right to relocation assistance and of the amount to be paid at the time a notice to vacate is served in accordance with § 4302.

4401.3 If more than one (1) tenant leases a rental unit, any relocation assistance due under this section shall be paid in equal portions to each tenant, unless the tenants request in writing, signed by each tenant, that the payment be divided in some other way.

4401.4 If a tenant is displaced under one of the provisions listed in § 4401.1 from a housing accommodation in which more than one owner, manager, or other person qualifies as a housing provider under the Act at the time the notice described in § 4401.2 is served, not including a sub-lessor, each housing provider shall be jointly and severally liable for the payment of relocation assistance.

4401.5 Payment of relocation assistance to a tenant shall be in the form of cash, money order, or certified check payable to the tenant.

4401.6 The amount of relocation assistance due to a tenant who is displaced under one of the provisions listed in § 4401.1 shall be determined in accordance with § 703(a) of the Act (D.C. Official Code § 42-3507.03(a)) or rules promulgated by the Mayor pursuant to § 703(b) (D.C. Official Code § 42-3507.03(b)).

4401.7 Relocation assistance due to a tenant who is displaced under one of the provisions listed in § 4401.1 shall be paid to the tenant as follows:

(a) If the housing provider has received at least ten (10) business days advance, written notice of the date upon which the tenant will vacate the rental unit, not later than twenty-four (24) hours before the date the tenant will vacate the rental unit; or

(b) If the tenant does not provide the housing provider with at least ten (10) business days advance, written notice of the date upon which the tenant will vacate the rental unit, not later than thirty (30) days after the tenant has vacated the rental unit.

4401.8 Except as provided by § 4401.9, payment of relocation assistance shall not be required with respect to any rental unit that is the subject of an outstanding judgment for possession for any reason obtained by the housing provider, or the housing provider's predecessor in interest, against a tenant.

4401.9 If an outstanding judgment for possession of a rental unit is based upon non-payment of rent and the non-payment arose after the service of a notice described in § 4401.2, the amount of relocation assistance determined in accordance with § 4401.6 shall be reduced by the amount determined by the court rendering the judgment for possession to be due and owing from the tenant to the housing provider.

4401.10 For the purposes of this section, a subtenant or sub-lessee shall be treated as a direct tenant of a housing provider that takes action under one of the provisions listed in

§ 4401.1, and the original tenant or sub-lessor shall not be responsible for the payment of relocation assistance to the subtenant or sub-lessee.

4499 DEFINITIONS

4499.1 The provisions and definitions of § 3899 of Chapter 38 of this title shall be applicable to this chapter.