

**RENTAL HOUSING COMMISSION
NOTICE OF EMERGENCY AND 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 adoption of the following emergency and proposed rulemaking to amend Chapter 41 (Coverage and Registration) and Chapter 42 (Rent Stabilization Program) of Title 14 (Housing) of the District of Columbia Municipal Regulations (“DCMR”).

The emergency and proposed rules relate to the registration requirements under the Act and notices required to be served and filed pursuant to the Rent Stabilization Program of the Act. The need for these changes was discovered following the promulgation of a comprehensive revisions of the implementing rules under the Act, effective December 31, 2021 (68 DCR 012634), as the Commission worked with the Rental Accommodations Division (“RAD”) of the Department of Housing and Community Development to revise the forms that housing providers are required to use for notifying tenants of certain information and for filing certain information with RAD.

Because of difficulties in publishing and disseminating the revised forms, and because of the necessary changes to the regulations, the Commission and RAD determined that a housing provider’s use of an incorrect form, or the form required information inconsistent with the regulations, after the revised rules went into effect should be excused for a reasonable period. This is incorporated by adding a new § 4200.17. This excuse is not intended to apply where a housing provider failed to use a required form, completed a form incorrectly on its face, or completed a form using incorrect information; only where the housing provider used the wrong version of a form, or the form and rules were inconsistent.

These rules also reflect the transfer of operations from the Department of Consumer and Regulatory Affairs to the Department of Buildings and the Department of Licensing and Consumer Protection, which became effective October 1, 2022. Any references to those successor agencies are applicable from that date forward. These rules additionally clarify the procedures for electronic filing of appeals with the Commission, to match the practices that have been in place since the COVID-19 emergency and have functioned effectively. Finally, the rules contain minor technical, spelling, and grammatical corrections.

These rules are being issued on an emergency basis because of the urgent need to clarify regulated housing providers’ obligations when registering rental units, increasing rent, or making disclosures to new tenants. Putting the changes into effect immediately will allow RAD to publish legally sufficient forms for immediate use. Certainty regarding administrative filings and notices to tenants is essential to the functioning of the Act’s rent stabilization system, and confusion about these requirements or the validity of these notices affects whether suits for evictions or back rent may proceed. These emergency rules were adopted on October 13, 2022 and became effective on that date.

The emergency rules will remain in effect for up to one hundred twenty (120) days after the date of adoption, on February 10, 2023, unless superseded by publication of a notice of final rulemaking in the *D.C. Register*. Directions for submitting comments on the proposed rules may be found at the end of this notice.

Title 14, HOUSING, of the DCMR is amended as follows:

Chapter 38, RENTAL HOUSING COMMISSION OPERATIONS AND PROCEDURES, is amended as follows:

Section 3801, FILING OF PLEADING, MOTIONS, AND OTHER DOCUMENTS, is amended as follows

Subsection 3801.10 is amended to read as follows:

3801.10 Pleadings, motions, or other documents may be filed by email attachment as follows:

- (a) All email 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 § 3801.12 when printed;
- (b) A party may file by email attachment without prior authorization; provided, that the Clerk may, in his or her discretion, revoke permission of any person to file by email attachment with three (3) business days’ notice to the person;
- (c) Any party that files a pleading, motion, or other document by email attachment shall be deemed to consent to electronic service from the Commission and any other party for the purposes of § 3803.3(c);
- (d) For the purpose of documenting receipt, the Clerk shall make a copy of the email 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 email shall be considered part of the filing;
- (e) An email received outside the Commission’s regular business hours shall be deemed filed at the start of the next day that the Commission is open for public business;
- (f) A party filing by email accepts the risk that an email or attachment may be delayed or disrupted by technical failure or defect and may not be properly filed; and

- (g) All filings by email attachment shall be sent to rhc.clerk@dc.gov.

Section 3899, DEFINITIONS, is amended as follows:

Subsection 3899.2 is amended by striking the definition of “Department of Consumer and Regulatory Affairs”.

Chapter 39, RENTAL ACCOMMODATIONS DIVISION, is amended as follows:

Section 3900, THE RENT ADMINISTRATOR, is amended as follows:

Subsection 3900.4(d) is amended to read as follows:

- (d) Referring appropriate matters to the Office of the Attorney General, the Department of Buildings, or the Department of Licensing and Consumer Protection.

Section 3901, FILING PETITIONS AND OTHER DOCUMENTS, is amended as follows:

Subsection 3901.2 is amended to read as follows:

3901.2 No fee shall be charged for filing any petition or other document with the Rental Accommodations Division; provided, that the applicable rental unit registration fee due under § 401 of the Act (D.C. Official Code § 42-3504.01) shall have been paid to the Department of Licensing and Consumer Protection before filing a Registration/Claim of Exemption Form for the subject housing accommodation.

Subsection 3901.13 is amended to read as follows:

- 3901.13 Unless otherwise directed by the Rent Administrator, only the following documents may be filed by email attachment:
- (a) Registration/Claim of Exemption Forms;
 - (b) Amended Registration Forms;
 - (c) Tenant’s Notice to Housing Provider of Elderly or Disability Status Forms;
 - (d) Elderly Tenant and Tenant with a Disability Claim of Exemption from Housing Provider Petition Rent Surcharge Increase Forms;
 - (e) Certificates of Adjustment in Rent Charged (including supporting Notices to Tenant of Adjustment in Rent Charged);
 - (f) Rent history disclosure forms;

- (g) Notices to vacate;
- (h) Tenant Petitions; and
- (i) Tenant Payment Plan Complaints under § 402 of the Coronavirus Support Temporary Amendment Act of 2021, effective June 24, 2021 (D.C. Law 24-0009; D.C. Official Code § 42-3281).

Section 3927, COMPLIANCE, is amended as follows:

Subsection 3927.6 is amended to read as follows:

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 Buildings or Department of Licensing and Consumer Protection, as applicable, if the conduct or inaction also constitutes a violation of any law or regulation enforced by that agency.

Chapter 41, COVERAGE AND REGISTRATION, is amended as follows:

Section 4102, REGISTRATION INFORMATION, is amended as follows:

Subsection 4102.2 is amended to read as follows:

4102.2 Except as provided by § 4102.3, 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.

Subsection 4102.6(b) is amended to read as follows:

- (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 pursuant to D.C. Official Code § 42-903(b) or § 203 of this title, or the same information if a registered agent is maintained by a resident owner; and

Subsection 4102.7 is amended to read as follows:

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 basis under the Act on which any 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.

Subsection 4102.11 is amended to read as follows:

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 Department of Licensing and Consumer Protection (or the Department of Consumer and Regulatory Affairs, as applicable). 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.

There is added a new subsection 4102.12 is added to read as follows:

4102.12 Each Registration/Claim of Exemption Form for a housing accommodation that is covered by the Rent Stabilization Program shall include a computation of the housing provider's rate of return for the housing accommodation, in accordance with § 4209; provided, that a housing provider's registration shall not be deemed invalid by reason of a good faith error in the computation, nor shall supporting documentation be required to be filed with the Registration/Claim of Exemption Form.

Section 4103, CHANGES TO REGISTRATION/CLAIM OF EXEMPTION FORMS, is amended as follows

Subsection 4103.3 is amended to read as follows:

4103.3 A housing provider who files an amendment to a Registration/Claim of Exemption Form as required by § 4103.1 shall, within fifteen (15) days of the return of a date-stamped copy of the form from the Rental Accommodations Division, provide a true copy of the form to all tenants in accordance with § 4101.6(a) or (b), except if the form is being filed pursuant to § 4106.11 to claim a tenant-specific subsidy exemption, in which case the form shall be served upon the tenant of the affected rental unit in accordance with § 4200.16(a), (b), or (c).

Section 4106, CLAIMS OF EXEMPTION FROM RENT STABILIZATION PROGRAM, is amended as follows:

Subsection 4106.14(a) is amended to read as follows:

(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) Pursuant to § 206(a)(4) of the Rental Housing Act of 1980, continuously vacant and not subject to a rental agreement during the period beginning on January 1, 1980 and ending on March 4, 1981; and

Subsection 4106.15 is amended to read as follows:

- 4106.15 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;
 - (b) The Registration/Claim of Exemption Form is filed in accordance with § 4107 (the small landlord exemption) and 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 proprietary lease or occupancy agreement, 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.

Section 4107, SMALL LANDLORD EXEMPTION, is amended as follows:

Subsection 4107.5 is amended to read as follows:

- 4107.5 A housing provider who claims the small landlord exemption shall file a separate Registration/Claim of Exemption Form for each housing accommodation with a separate street address. Each Registration/Claim of Exemption Form on which the small landlord exemption is claimed shall list 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.

Subsection 4107.10 is amended to read as follows:

- 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 Tenant

Opportunity to Purchase Act of 1980 (D.C. Law 3-86; D.C. Official Code §§ 42-3404.01 *et seq.*), the interest shall be attributed to the person.

Section 4109, REGISTRATION FEE, is amended as follows:

Subsection 4109.1 is amended to read as follows:

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 Licensing and Consumer Protection (“DLCP”) in accordance with § 207.1 of this title at the time its housing business license is issued or renewed or as otherwise directed by DLCP.

Section 4111, DISCLOSURES TO PROSPECTIVE AND CURRENT TENANTS, is amended as follows:

Subsection 4111.2(a)(6) is amended to read as follows:

- (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 Buildings (or the Department of Consumer and Regulatory Affairs, as applicable) within the past twelve (12) months, or at any time if the violation(s) has not been abated;

Subsection 4111.6 is amended to read as follows:

4111.6 For units covered by the Rent Stabilization Program, a copy of the disclosure form given to a tenant pursuant to § 4111.5(a) shall be filed with the Rental Accommodations Division within thirty (30) days of the commencement of the tenancy if the rent charged is being adjusted based on a vacancy adjustment under § 4207. The copy filed shall include only the rent history portion of the disclosure form.

Chapter 42, RENT STABILIZATION PROGRAM, is amended as follows:

Section 4200, GENERAL OVERVIEW, is amended as follows:

A new subsection 4200.17 is added:

4200.17 A housing provider shall not be liable for violating any provision of Chapter 41 or this chapter because, between December 31, 2021 and October 31, 2022, the housing provider served a tenant with any notice or filed any document with the Rental Accommodations Division on a form that was published by the Rent Administrator prior to December 2021 or on a form published by the Rent

Administrator that required information different from that required by the Act or this chapter.

Section 4205, IMPLEMENTATION AND NOTICE OF RENT ADJUSTMENTS, is amended as follows:

The lead-in language of subsection 4205.4(a) is amended to read as follows:

- (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 § 4200.16, on a Notice to Tenant of Rent Adjustment form published by the Rent Administrator, in which the following items shall be included:

Subsection 4205.4(a)(6)(C) is amended to read as follows:

- (C) The standards 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.

Subsection 4205.4(d) is amended to read as follows:

- (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 Rent Adjustment, and shall certify that the notice was served on the tenant by listing the names of persons served, unit numbers, date, and type of service provided for each affected rental unit in the housing accommodation.

Subsection 4205.6(a) is amended to read as follows:

- (a) If the rental unit is occupied, the date on which the new rent is due, as stated on the Notice to Tenant of Rent Adjustment served on the tenant; or

Section 4207, VACANCY RENT ADJUSTMENTS, is amended as follows:

Subsection 4207.8 is amended to read as follows:

4207.8 If a rent adjustment is implemented under this section, a copy of the disclosure form given to the new tenant pursuant to § 4111.5(a) shall be filed with the Rental Accommodations Division within thirty (30) days of the commencement of the tenancy in accordance with § 4111.6.

Section 4209, PETITIONS BASED ON CLAIM OF HARDSHIP, is amended as follows:

Subsection 4209.13(g) is amended to read as follows:

- (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 Buildings (or the Department of Consumer and Regulatory Affairs, as applicable); or

Section 4212, PETITIONS BASED ON SUBSTANTIAL REHABILITATION, is amended as follows:

Subsection 4212.22 is amended to read as follows:

4212.22 Notwithstanding § 4212.21, if all rental units proposed to be affected by a substantial rehabilitation petition are certified by the Housing Provider to be vacant the Rent Administrator shall review the petition and supporting materials in accordance with this section and issue a final order of granting or denying the petition, in whole or in part.

Section 4214, TENANT PETITIONS, is amended as follows:

Subsection 4214.4(f) is amended to read as follows:

- (j) A rent increase was implemented after failing to make the required disclosures under § 222 of the Act (D.C. Official Code § 42-3502.22) or § 4111 of this title.

Section 4215, PROHIBITED RENT ADJUSTMENTS FOR ELDERLY TENANTS AND TENANTS WITH A DISABILITY, is amended as follows:

Subsection 4215.4 is amended to read as follows:

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 occupied by a protected tenant if the Chief Financial Officer of the District of Columbia determines and notifies the Rent Administrator in writing 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)). The Rent Administrator shall notify any affected housing provider in writing, by U.S. mail or email, if funds are not available and shall include a copy of the Chief Financial Officer's written determination.

Subsection 4215.11 is amended to read as follows:

4215.11 The Rent Administrator shall immediately send notice, by U.S. mail or email, 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.

Subsection 4215.13(b) is amended to read as follows:

- (b) The housing provider has substantial grounds to believe that the tenant does not qualify for protected status or that relevant documentation is fraudulent or has been falsified;

Section 4216, REQUIREMENT TO MAINTAIN SUBSTANTIAL COMPLIANCE WITH HOUSING REGULATIONS, is amended as follows:

Subsection 4216.3 is amended to read as follows:

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 Buildings (“DOB”) 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 DOB 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 DOB may have required in the citation;
 - (2) Has been certified by DOB, 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.

Chapter 43, EVICTIONS, RETALIATION, AND TENANT RIGHTS, is amended as follows:

Section 4300, GROUNDS FOR EVICTION, is amended as follows:

Subsection 4300.1(b)(9) is amended to read as follows:

- (9) For closure of a building by order of the Department of Buildings, 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).

Subsection 4300.13 is amended to read as follows:

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 Buildings and a certification that the tenant has been given the opportunity to purchase provided by TOPA, if required.

Section 4304, TENANT RIGHTS TO ORGANIZE, is amended as follows:

Subsection 4304.3(f)(1) is amended to read as follows:

- (1) Rent increases, requests or demands for rent increases, or the implementation of, or petitions or applications for administrative approval of, rent adjustments under the Rent Stabilization Program;

Chapter 44, DEMOLITION, CONVERSION, AND RELOCATION ASSISTANCE, is amended as follows:

Section 4400 is amended as follows:

Subsection 4400.1 is amended to read as follows:

4400.1 If a housing provider requests a permit to demolish a housing accommodation by filing an application with the Department of Buildings, a copy of the application shall be filed with the Rent Administrator.

Subsection 4400.3 is amended to read as follows:

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 Buildings of the determination.

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.

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 thirty (30) days after publication of this notice in the *D.C. Register*, November 21, 2022.