DISTRICT OF COLUMBIA 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" or "Rental Housing Act"), the Rental Housing Commission ("Commission") hereby gives notice of the intent to adopt the following amendments to Chapter 3 (Landlord and Tenant), Chapter 41 (Coverage and Registration), Chapter 42 (Rent Stabilization Program), and Chapter 43 (Evictions, Retaliation, and Tenant Rights) of Title 14 (Housing) of the District of Columbia Municipal Regulations ("DCMR") in not less than thirty (30) days from the date of publication of this notice in the *District of Columbia Register*.

The proposed amendments relate to § 3 of the Eviction Record Sealing Authority and Fairness in Renting Amendment Act of 2022, effective May 18, 2022 (D.C. Law 24-115; 69 D.C.R 002683) ("ERSA-FIRA"). The ERSA-FIRA, in relevant part, amends § 501 and creates new § 510 of the Rental Housing Act (D.C. Official Code §§ 42-3505.01 & 42-3505.10). The amendments to § 501 of the Act place evictions for nonpayment of rent under the Act's jurisdiction by requiring notices to vacate before the filing of an action in court and modify the requirements for service of notices to vacate for all reasons. New § 510 of the Act establishes several requirements and prohibitions for housing providers that screen tenant applications based on consumer reports. The Commission is not proposing rules related to new § 509 of the Act, the eviction record sealing provisions.

The proposed amendments also relate to the Fairness in Renting Clarification Amendment Act of 2023, effective November 28, 2023 (D.C. Law 25-65; 70 D.C.R. 013822) ("Clarification Act"). The Clarification Act further amends § 501 of the Act related to the $600 threshold for nonpayment of rent eviction cases, § 510 of the Act related to application fees, and § 904 of the Act (D.C. Official Code § 42-3509.04) related to the timing of notices of rent increases.

The Commission issued a notice of proposed rulemaking related to the ERSA-FIRA on December 9, 2022. *See* 69 D.C.R. 015208 ("First Proposed Rulemaking"). Four sets of comments were received in response to the First Proposed Rulemaking. The reasoning set forth in that notice is incorporated herein except where, for the reasons explained below, substantive changes have been made in response to significant public comments, because of amendments in the Clarification Act, or because of further consideration by the Commission.

The Commission's detailed reasoning for the substantive changes is as follows:

Section 501 – Notices to Vacate and Evictions

- **Terminology:** One commentor suggested that the document title initially proposed by the Commission (a "notice of nonpayment and possible eviction") was inconsistent with the final, permanent version of the ERSA-FIRA, which uses the term "notice of . . . intent to file a claim." Subsequent, temporary law changed this phrase to "notice of past due rent," *see* D.C. Law 24-203, but the final, permanent version of the Clarification Act does not extend that temporary provision. For consistency with the Clarification Act, the Commission has revised the proposed rules in § 4300 to identify the required notice as a "notice of intent to file a claim." The Commission recognizes, however, that this shorthand may not be entirely clear to tenants if used as a document title, and we note that the use of neither a particular document heading/title/caption is required by the Act or regulations nor is a form published by RAD is required. If a different term develops in common usage and practice, the Commission may later revise the terminology in its rules.

- **$600 threshold:** One commentor suggested that the Commission's initial proposal in § 4300.5 inappropriately added a requirement, not found in the statute, that a notice of intent to file a claim for possession based on nonpayment of rent cannot be served unless the tenant owes $600, as that amount is required in order to file a claim in Superior Court. The Commission considered this comment, but the Clarification Act specifically adds the $600 threshold to notices of intent to file a claim in § 501(a-1)(1) of the Act. Accordingly, the proposed rule in § 4300.5 is unchanged in this respect. The proposed rule in § 4300.7 is also updated to reflect the change in the required language pursuant to § 501(a-1)(2) of the Act, as amended by the Clarification Act.

- **License and registration:** One commentor suggested that the Commission's initial proposal inappropriately added a requirement, not found in the statute, that notices to vacate for any reason must include the business license number and registration/exemption number for the housing accommodation. Although under the ERSA-FIRA, licensure and registration are required to file a claim for possession, *see* D.C. Official Code § 16-1501(c), the Commission agrees with the commentor that the provision allowing waiver in extenuating circumstances (such as agency delay or tenant interference) suggests that the legislative intent is that a housing provider that has been operating without a license or registration may correct their noncompliance up until the time a suit for possession is actually filed. Moreover, the ERSA-FIRA eliminated the original requirement in § 501(a) of the Act that all notices to vacate contain "a statement that the housing accommodation is registered." The Commission notes that it may be preferable to document compliance as early as possible by including license and registration numbers in a notice to vacate, but the Commission agrees that the Act does not make failure to do so fatal to a subsequent suit for possession. Accordingly, the requirement to include those numbers on notices to vacate has been removed from §§ 4300.7, 4301.4, and 4302.1. Further, because the relevant, statutory provisions regarding subtenants, D.C. Official Code §§ 16-1501(c) and 42-3505.01(q), only apply to court process, the filing of a complaint and of a writ of restitution, respectively, the Commission has removed the previously proposed rules in §§ 4300.8, 4301.5, and 4302.2.

- **Service:** One commentor suggested that the phrase "handing" a document to a person is not clear and that it does not match the Code. The Commission notes that the proposed language was derived from § 904(a) of the Act, generally governing service of documents required by the Act (unless the Commission provides otherwise by rulemaking). The Commission recognizes that, for purposes of initiating eviction proceedings, it may be preferable for the rules of service of a notice of intent to file a claim to be the same as the rules for service of a summons. The Commission has revised § 4300.24 (previously .25) to more closely track the language in D.C. Official Code § 16-1502(a), as amended by the ERSA-FIRA. The Commission has also incorporated the standard, found in case law, that posting is disfavored and a last resort. *See Jones v. Hersh*, 845 A.2d 541, 546-47 (D.C. 2004).

- **Language access safe harbor:** One commentor suggested that the proposed rule in § 4300.24 (now § 4300.23) would create a significant loophole in the regulations if a housing provider offered a lease addendum that a tenant did not fill out but, over many years of a tenancy, became aware of a tenant's covered, primary language. The Commission agrees this would undercut the intent of the ERSA-FIRA. The Commission has revised § 4300.23 to encourage housing providers to make inquiries, including the use of "I speak" cards published by the Office of Human Rights, *see* https://ohr.dc.gov/page/LAportal/toolkit, which were alluded to in the preamble of the First Proposed Rulemaking. However, rather than excuse non-performance, the revised rule requires the consideration of whether there were good faith efforts to obtain tenant language information, specifically including "I speak" cards and lease addendums. This consideration goes to whether a housing provider "reasonably should have known" that a tenant speaks a covered language; actual knowledge suffices to show a violation. Good faith efforts should also be considered in the totality of circumstances; for example, if many years have passed and other facts suggest a housing provider should have known that a tenant speaks a covered language, those earlier efforts might not excuse the failure to give a translated notice.

- **Updated language access data:** As explained in the First Proposed Rulemaking, the Commission determined the "covered languages" for notices of intent to file a claim and notices to vacate by looking to data tabulated and published by the Migration Policy Institute, available at https://www.migrationpolicy.org/data/state-profiles/state/language/DC. This data has been updated since the First Proposed Rulemaking was published (2021 data), and now indicates that Korean meets the threshold of five hundred (500) individuals provided by the Language Access Act, *see* D.C. Official Code § 2-1933(a), in addition to Amharic, Arabic, Chinese, French, and Vietnamese, but Tagalog, which was listed in the First Proposed Rulemaking, does not:

Languages Spoken at Home	Total Number (age 5+)	Speak English "very well"	Speak English less than "very well" (LEP/NEP)	Number of LEP/NEP Home Speakers of Language
Amharic, Somali, or Other Afro-Asiatic Languages	6,951	48.9%	51.1%	3,549
Chinese (including Mandarin, Cantonese)	5,091	67.6%	32.4%	1,650
French (including Cajun)	8,505	83.2%	16.8%	1,430
Arabic	2,202	76.5%	23.5%	517
Vietnamese	1,209	56.7%	43.3%	524
Korean	1,926	73.2%	26.8%	516
Tagalog (including Filipino)	1,250	65.4%	34.6%	432

The Commission anticipates using the latest available data in any final rulemaking. However, the Commission does not anticipate updating the rules every year when new American Consumer Survey data becomes available. The Commission welcomes future public comment suggesting rulemaking to update the list of covered languages as appropriate.

Section 510 – Tenant Applications and Screening

- **Application and holding fees:** The Clarification Act includes two (2) new definitions, "application fee" and "holding deposit," which are reproduced in § 4399.2.

- **Fee prohibitions:** The Clarification Act provides several additional restrictions on fees in § 510(b)(3), (4), and (5), (b-1), and (b-2) of the Act. First, no fees other than application fees may be charged (and, per the definition of "application fee," all pre-leasing monies charged except holding deposits are deemed application fees). Second, prospective tenants may only be charged one application fee in any thirty- (30-) day period. Third, replacement fees for changing tenants mid-lease are capped at the limit for application fees ($50 in 2022 dollars). These prohibitions are added in new §§ 4307.7 - 4307.9, and the subsequent subsections previously proposed are renumbered accordingly.

  However, the new prohibitions in § 510(b-2) of the Act on maintenance and cleaning fees are broader than the "application and tenant screening" scope of proposed § 4307 of the rules. The Commission believes this statutory provision is best codified in the more general Housing Regulations of the District of Columbia, Commissioners' Order 55-1503 (August 11, 1955) ("Housing Regulations"), found in Chapter 3 of Title 14 of the DCMR, as they relate to the implied warranty of habitability (§ 301) and security deposits (§§ 308-311). The proposed language in new §§ 301.3 and 301.4, which uses the terms "landlord" and "habitation," is intended to conform to the phrasing of the older Housing Regulations, but it should not be substantively different from the enacted language in § 510(b-2) of the Act, which uses the terms "housing provider" and "[rental] unit."

- **Leasing to others:** One commentor suggested that the last clause of § 4307.13 in the proposed rules (now § 4307.16), regarding "leasing a rental unit to other prospective tenants," although statutory, creates a large loophole if a housing provider can claim it didn't "deny" an application but merely rented to another applicant. The Commission does not believe the "loophole" is so large. Proposed § 4307.16 of the rules (derived from § 510(g)(3) of the Act), only applies after a housing provider has issued an adverse action notice to the prospective tenant and the tenant has exercised the right to respond. This provision allows the housing provider to proceed to fill the vacant unit notwithstanding the denied-tenant's right to respond to the adverse action if the denied-tenant believes errors were made.

  The Commission observes that there is some ambiguity in the statutory scheme and the proposed definition of "adverse action" in § 4399.2 that was borrowed from Federal Trade Commission guidance under the Fair Credit Reporting Act (15 U.S.C. § 1681 *et seq.*). Specifically, if a housing provider has multiple applicants for a rental unit, it is not entirely clear at what point choosing to rent to one applicant is an adverse action against all other applicants. Arguably, an adverse action is taken the moment an unfavorable comparison is made between two applications. However, a housing provider might reasonably keep multiple applications "live" as backups until the selected applicant actually signs a lease. The commentor suggested a "first in time" rule, which would require housing providers to accept or deny each application in the order received. The Commission believes this would be a drastic change to the way housing is marketed in the District and would pose risks of significant unintended consequences, such as causing housing providers to limit the sources of applications they will consider. The Commission believes further regulation on these situations should await real-world experience and identification of specific actions that undermine the purpose of the law.

- **"Adverse action" definition:** One commentor suggested that part (b)(4) of the proposed definition of "adverse action" in § 4399.2 would create enforcement difficulties, because prospective tenants do not know what "another applicant" would be charged for rent. The commentor suggests the definition should be tied to publicly advertised terms. The Commission does not believe any modification is necessary for two reasons. First, the language of the definition is taken directly from § 510(j)(1) of the Act. Second, the lead-in language of part (b) of the proposed definition is tied to "terms . . . less-favorable . . . than those included in any . . . advertisement." Accordingly, "another applicant" would, for example, be someone required to pay only the advertised rent or deposit. The Commission therefore has not modified the proposed definition.

Section 904 – Notices of Rent Increases

- Pursuant to the Clarification Act, amending § 904(b) of the Rental Housing Act, §§ 4205.4(a) and 4214.4(g) of the rules are amended to increase the thirty (30) days' notice requirement for rent increases to sixty (60) days.

- Pursuant to the Clarification Act, amending § 202(a)(3) of the Rental Housing Act, §§ 4206.3 and 4215.9 of the rules are amended to require the Commission to publish the annual, inflation based adjustments by February 1 of each year, allowing housing providers thirty (30) days' notice before they issue (now-) sixty (60) days' notice to tenants of rent adjustments that become effective on May 1.

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.

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 Monday, April 29, 2024.

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

Chapter 3, LANDLORD AND TENANT, is amended as follows:

Section 301, IMPLIED WARRANTY AND OTHER REMEDIES, is amended as follows:

New subsections 301.3 and 301.4 are added to read as follows:

301.3 A landlord, its agent, or other person entitled to receive rent for a habitation shall not charge a fee to a prospective tenant before move-in, a tenant during a tenancy, or a former tenant after move-out for services required of the landlord to maintain the habitation in a condition consistent with the implied warranty provided by § 301.1, including Title 12 of the District of Columbia Municipal Regulations, or any substantially similar subsequent regulations.

301.4 Nothing in subsection 301.3 shall prohibit a landlord from withholding monies from a security deposit in accordance with § 309.1(2) or charging a professional cleaning fee for expenses incurred due to damage to the habitation beyond ordinary wear and tear, as defined in D.C. Official Code § 42-3502.17(c)(3).

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

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

Subsection 4111.5 is amended to read as follows:

4111.5 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 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;

(b) A copy of each record or 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; and

(c) Written documentation of all information required by § 4307.2 as to whether and how the housing provider will conduct any tenant screening, which shall be provided either directly to the tenant or by posting in accordance with § 4307.3.

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

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

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

(a) The housing provider shall provide the tenant of the rental unit not less than sixty (60) 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:

Section 4206, ANNUAL RENT ADJUSTMENTS OF GENERAL APPLICABILITY, is amended as follows:

The lead-in language of subsection 4206.3 is amended to read as follows:

4206.3 Prior to February 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*:

Section 4214, TENANT PETITIONS, is amended as follows:

Subparagraph 4214.4(g) is amended to read as follows:

(g) A rent increase was implemented without notice or with less than sixty (60) days' notice of the increase to the tenant, or the notice was otherwise not in compliance with § 4205.4;

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

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

The caption of section 4300 is amended to read as follows:

4300 NONPAYMENT OF RENT AND OTHER GROUNDS FOR EVICTION GENERALLY

Existing subsections 4300.1 through 4300.5 are amended to read as follows:

4300.1 Except as provided by § 4300.2, a tenant of any rental unit covered by the Act, as provided in § 4100.3, shall not be evicted from the rental unit except for:

(a) Nonpayment of rent, pursuant to § 501(a-1) of the Act (D.C. Official Code § 42-3505.01(a-1)), after the service of a notice that complies with this section and the opportunity to pay all rent lawfully owed;

(b) A violation of an obligation of tenancy, pursuant to § 501(b) of the Act (D.C. Official Code § 42-3505.01(b)), after service of a notice that complies with § 4301 and the opportunity to correct the violation; or

(c) The following reasons, after the service of a notice that complies with § 4302:

(1) Performance of an illegal act on the premises, pursuant to § 501(c) of the Act (D.C. Official Code § 42-3505.01(c));

(2) 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));

(3) 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));

(4) Unsafe alterations or renovations, pursuant to § 501(f) of the Act (D.C. Official Code § 42-3505.01(f));

(5) Demolition of the housing accommodation, pursuant to § 501(g) of the Act (D.C. Official Code § 42-3505.01(g));

(6) Substantial rehabilitation, pursuant to §§ 214 and 501(h) of the Act (D.C. Official Code §§ 42-3502.14 & 42-3505.01(h));

(7) Discontinuation of housing use and occupancy, pursuant to § 501(i) of the Act (D.C. Official Code § 42-3505.01(i)); or

(8) 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).

4300.2 Nothing in this section, § 4301, or § 4302 shall apply to the eviction of a tenant:

(a) 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

(b) 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 grounds for eviction being sought by the applicable subsections of § 501(a-1) through (i) of the Act (D.C. Official Code § 42-3505.01(a-1)-(i)) and unless stated in a notice served in accordance with this section, § 4301, or § 4302.

4300.5 A notice that a housing provider intends to file a claim for possession of a rental unit because of the nonpayment of rent pursuant to § 501(a-1) of the Act (D.C. Official Code § 42-3505.01(a-1) ("Notice of Intent to File a Claim") shall not be served on a tenant if the amount of unpaid, past due rent is less than six hundred dollars ($600).

4300.6 A housing provider shall not file an action in court to evict a tenant for nonpayment of rent until at least thirty (30) days after the date of service of a Notice of Intent to File a Claim that complies with § 4300.7.

4300.7 In order to be valid, a Notice of Intent to File a Claim shall state:

(a) The total amount of rent owed as of the date of the notice;

(b) The date of the rent charges and payments, if any, for the period of delinquency, in a ledger included in or attached to the notice;

(c) That the tenant has the right to remain in the rental unit if the total balance of unpaid rent is paid in full before a court orders the tenant's eviction;

(d) That the housing provider may file a case in court to evict the tenant if the tenant does not pay the balance of unpaid rent in full within thirty (30) days of service of the notice and the unpaid balance is $600 or more

(e) That the housing provider may notify a tenant of any unpaid rent less than $600 but may not file a case in court seeking the tenant's eviction;

(f) That the tenant has the right to defend against an eviction in court and that only a court can order the tenant's eviction; and

(g) That further help or free legal services may be available by contacting the Office of the Tenant Advocate at (202) 719-6560 or the Landlord Tenant Legal Assistance Network at (202) 780-2575.

4300.8 Any notice served on a tenant for any reason other than the nonpayment of rent shall also be filed with the Rent Administrator, in accordance with § 3901, no later than five (5) days after service on the tenant and shall include a certification that the tenant was served in accordance with § 4300.24 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 a possible violation of the Act or this chapter has occurred.

Existing subsections 4300.6 through 4300.18 are renumbered as subsections 4300.9 through 4300.21.

New subsections 4300.22, 4300.23, and 4300.24 are added to read as follows:

4300.22 Any notice required to be served on a tenant under this section, § 4301, or § 4302 shall be written in:

(a) Both English and Spanish; and

(b) The tenant's primary language if the housing provider knows or reasonably should know that the tenant's primary language is: Amharic, Arabic, Chinese, French, Korean, or Vietnamese.

4300.23 In determining whether a housing provider reasonably should have known that a tenant primarily speaks a language covered by § 4300.22(b), a finder of fact shall consider, among all other relevant facts:

(a) Whether the housing provider generally made good faith efforts to determine the primary languages spoken by its tenants, which may include:

(1) Signed, written leases or lease addendums in provided in covered languages; or

(2) The distribution of "I speak" cards as published by the Office of Human Rights or similar materials; and

(b) Whether the affected tenant responded to such efforts.

4300.24 For the purposes of this section, § 4301, and § 4302, service of a required notice upon any person (other than the Rent Administrator) shall be completed:

(a) By delivering a copy of the notice to the tenant personally, or, if the tenant has left the District of Columbia or cannot be found, by leaving a copy with some person above the age of sixteen (16) years of age residing on or in possession of the subject rental unit; or

(b) If by diligent and conscientious efforts service cannot be completed under paragraph (a), by both:

(1) Posting a copy of the notice on the premises of the rental unit where it may be conveniently read and capturing timestamped, photographic evidence of the posting for the housing provider's records; and

(2) Mailing a copy of the notice to the tenant by first class U.S. mail, postage prepaid, to the rental unit, addressed in the name of the tenant or, if unknown, the name of the person occupying the rental unit, within three (3) calendar days of the posting.

Section 4301, NOTICES TO CORRECT VIOLATION OF TENANCY OR TO VACATE, is amended as follows:

Subsection 4301.4 is amended to read as follows:

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; and

(d) 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.

Section 4302, NOTICES TO VACATE FOR OTHER REASONS, is amended as follows:

Subsection 4302.1 is amended to read as follows:

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 or the planned use or changes to the premises, 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; and

(c) 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.

There is added a new section 4307 to read as follows:

4307 TENANT APPLICATIONS AND SCREENING

4307.1 Any housing provider that requires an application or fees from a prospective tenant or otherwise engages in any tenant screening shall comply with § 510 of the Act (D.C. Official Code § 42-3505.10) and this section.

4307.2 Before requesting any information or fees from a prospective tenant as part of tenant screening, a housing provider shall notify the prospective tenant of the following:

(a) The amount and purpose of any application fee, mandatory fee, optional fee, security deposit, or other fee or deposit that will or may be charged to a tenant or prospective tenant, the timing of the charge, and whether each fee is refundable and under what conditions a refund, in whole or in part, will be issued, in accordance with all applicable law;

(b) The types of information that will be accessed to conduct a tenant screening;

(c) The specific criteria, if any, that will result in an automatic denial of the application;

(d) Any additional criteria that may result in the denial of the application;

(e) If a credit score or consumer report will be used for tenant screening, the name and contact information of the consumer reporting agency that will furnish the score or report;

(f) Either:

(1) The approximate number of rental units that become available for rent in the housing accommodation each calendar year, specifying the number of bedrooms and monthly rent; or

(2) If the number of rental units in subparagraph (1) cannot reasonably be estimated, the number of rental units in the housing accommodation that became available for rent in each calendar month of the housing provider's prior fiscal year;

(g) The number of days after receipt of a prospective tenant's application that the housing provider will respond with an approval or denial decision;

(h) That the prospective tenant has a right:

(A) To obtain a free copy of any credit score or consumer report obtained by the housing provider in the event of a denial of the application or other adverse action, in accordance with § 4307.14(b);

(B) To dispute whether any information that may form the basis for an adverse action is inaccurate, incorrectly attributed to the prospective tenant, or prohibited by §§ 4307.10, 4307.11, or 4307.13;

(C) To receive a response from the housing provider regarding any disputed information, in accordance with § 4307.15; and

(D) To dispute inaccurate or incomplete information with and have the dispute investigated by the consumer reporting agency under the Fair Credit Reporting Act, as described at https://consumerfinance.gov/learnmore;

(i) That the prospective tenant has a right to a refund of any application fee in accordance with § 4307.6 if it is not used by the housing provider; and

(j) That the prospective tenant may file either a complaint with the Office of Human Rights or a civil action in the Superior Court of the District of Columbia if he or she believes the housing provider has violated § 510 of the Act (D.C. Official Code § 42-3505.10) or this section.

4307.3 A prospective tenant shall be notified of the information listed in § 4307.2 in writing provided either directly to the prospective tenant or by posting the information in a manner reasonably likely to be found and read by a prospective tenant, including, for example, an office where rental applications are received, on a website describing the housing accommodation, or in an advertisement for the rental unit.

4307.4 A housing provider shall not charge an application fee more than fifty dollars ($50) between May 18, 2022 and December 31, 2023.

4307.5 On and after January 1, 2024, a housing provider shall not charge an application fee more than the product of:

(a) Fifty dollars ($50); multiplied by

(b) The quotient of:

(1) The CPI-U for the calendar year preceding the submission of the application; divided by

(2) The CPI-U for year 2022, which was 295.792.

4307.6 If a housing provider receives an application fee and does not conduct any tenant screening for any reason, the housing provider shall refund the application fee to the tenant within fourteen (14) days of receiving the fee.

4307.7 If a prospective tenant applies for a rental unit and pays an application fee and the housing provider conducts any tenant screening, and if, within thirty (30) days of submitting the application, the prospective tenant applies for another rental unit in the District owned or operated by the same housing provider, the housing provider shall not charge the prospective tenant any additional application fee, unless additional tenant screening procedures are required.

4307.8 A housing provider shall not charge a prospective tenant any fee except an application fee prior to the execution of a lease with the tenant; provided, that a holding deposit may be required, unless the prospective tenant will pay rent with a governmental-funded voucher, in which case the housing provider may not require a holding deposit.

4307.9 A housing provider may require a tenant to pay a replacement fee if the tenant is permitted to find a replacement tenant, assign the lease to another tenant, or sublet to another tenant; provided, that the amount of the replacement fee shall not exceed the allowable amount of an application fee under §§ 4307.4 or 4307.5.

4307.10 A housing provider shall not, as part of any tenant screening, inquire about, require a prospective tenant to disclose or reveal, or base an adverse action, in whole or in part, on whether a previous housing provider has filed a claim to recover possession against the tenant if the action:

(a) Did not result in a judgment for possession in favor of the housing provider; or

(b) Was filed more than three (3) years before the date of the application.

4307.11 A housing provider shall not, as part of any tenant screening, inquire about, require a prospective tenant to disclose or reveal, or base an adverse action, in whole or in part, on whether a previous housing provider has filed any claim alleging a breach of lease against the tenant that:

(a) Stemmed from an incident that the prospective tenant demonstrates may constitute a defense to an action for possession under § 501(c-1) of the Act (D.C. Official Code § 42-3505.01(c-1)) or a federal law pertaining to domestic violence, dating violence, sexual assault, or stalking, including records of civil or criminal protection orders sought or obtained by the prospective tenant or of criminal matters in which the prospective tenant is a witness;

(b) Stemmed from an incident in which the prospective tenant was a victim of a crime in the rental unit for which the lease was allegedly breached;

(c) Was related to a disability of the prospective tenant or a member of the prospective tenant's household at the time; or

(d) Occurred more than three (3) years before the date of the application.

4307.12 A housing provider shall not be found to have violated §§ 4307.10 or 4307.11 solely by reason of having received, without specifically requesting, any information described in those subsections in a consumer report; provided, that if such information was received, the housing provider shall bear the burden in a case under § 4307.17 to demonstrate that the adverse action was not taken, in whole or in part, based on that information, which may include that the housing provider relied on incomplete or inaccurate information received from the consumer reporting agency or that the housing provider could not have reasonably known that the information received related to prohibited criteria.

4307.13 A housing provider shall not, as part of any tenant screening, base an adverse action solely on a prospective tenant's credit score or lack thereof; provided, that it shall not be a violation of this subsection for a housing provider to rely on information, other than a credit score or information described in §§ 4307.10 and 4307.11, that has been disclosed in a credit or consumer report and that is directly relevant to the fitness of a prospective tenant.

4307.14 If a housing provider takes an adverse action on a prospective tenant's application based on information received through tenant screening, the housing provider shall, no later than the response date provided to the tenant in accordance with § 4307.2(g), give a written notice of the adverse action to the prospective tenant, which shall include:

(a) The specific basis or bases for the adverse action;

(b) A copy or summary, free of charge, of any information obtained from a third party that formed any basis for the adverse action;

(c) A statement informing the prospective tenant of his or her rights to dispute any basis of the adverse action in accordance with § 4307.15; and

(d) A statement informing the prospective tenant of his or her right to file a complaint with the Office of Human Rights or the Superior Court if he or she believes the housing provider has violated § 510 of the Act (D.C. Official Code § 42-3505.10) or this section.

4307.15 If a prospective tenant, after receiving notice of an adverse action by a housing provider based on tenant screening, notifies the housing provider that any information forming a basis for the adverse action was inaccurate, incorrectly attributed to the prospective tenant, or prohibited by §§ 4307.10, 4307.11, or 4307.13, the housing provider shall respond in writing, by mail, email, or personal delivery, within ten (10) days after receipt of the notice from the prospective tenant.

4307.16 Nothing in § 4307.15 shall be construed to prohibit a housing provider from:

(a) Considering debts owed to a housing authority;

(b) Considering any other criteria established in federal law; or

(c) Leasing a rental unit to other prospective tenants.

4307.17 A prospective tenant who believes that a housing provider has violated § 510 of the Act (D.C. Official Code § 42-3505.10) or this section may either:

(a) File a complaint with the Office of Human Rights to seek the imposition of fines, half of which shall be awarded to the prospective tenant and half of which shall be deposited into the General Fund of the District of Columbia; or

(b) Bring a civil action in the Superior Court within one (1) year of the alleged violation to seek damages, attorney's fees, and equitable relief.

Section 4399, DEFINITIONS, is amended as follows:

Subsection 4399.2 is amended to read as follows:

4399.2 In addition to § 4399.1, the following terms shall have the meanings set forth below:

Adverse action –

(a) Denial of a prospective tenant's rental application; or

(b) Approval of a prospective tenant's rental application, subject to terms or conditions different and less-favorable to the prospective tenant than those included in any written notice, statement, or advertisement for the rental unit, including written communication sent directly from the housing provider to the prospective tenant, including:

(1) Requiring a co-signer on the lease;

(2) Requiring a deposit that would not be required for another applicant;

(3) Requiring a larger deposit than would be required for another applicant; or

(4) Demanding more rent than would be charged to another applicant.

Application Fee – the total of all costs of fees that a prospective tenant is required to pay to a housing provider at the time of application or at any time prior to signing a lease as a prerequisite to evaluating or approving a prospective tenant's application for rental housing, including processing, reviewing, or screening the prospective tenant's application, but not including holing deposits.

Consumer report – in accordance with § 603(d) of the Fair Credit Reporting Act (15 U.S.C. § 1681a(d)), in relevant part:

(a) In general: any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for rental housing purposes.

(b) Exclusions: the term "consumer report" does not include:

(1) Any:

(A) Report containing information solely as to transactions or experiences between the consumer and the person making the report;

(B) Communications of that information among persons related by common ownership or affiliated by corporate control; or

(C) Communication of other information among persons related by common ownership or affiliated by corporate control, if it is clearly and conspicuously disclosed to the consumer that the information may be communicated among such persons and the consumer is given the opportunity, before the time that the information is initially communicated, to direct that such information not be communicated among such persons;

(2) Any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device;

(3) Any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his or her decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made, and such person makes the disclosures to the consumer required under § 615 of the Fair Credit Reporting Act (15 U.S.C. § 1681m).

Consumer reporting agency – in accordance with § 603(f) of the Fair Credit Reporting Act (15 U.S.C. § 1681a(f)), any person that, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

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.

Credit score – in accordance with § 609(f)(2)(A) of the Fair Credit Reporting Act (15 U.S.C. § 1681g(f)(2)(A)), in relevant part, a numerical value or a categorization derived from a statistical tool or modeling system used by a person who makes or arranges a loan to predict the likelihood of certain credit behaviors, including default (and the numerical value or the categorization derived from such analysis may also be referred to as a “risk predictor” or “risk score”).

Holding deposit – the amount a housing provider requires a prospective tenant to pay after a housing provider approves a tenant’s application, which temporarily makes a unit unavailable to other prospective tenants and which if a tenant accepts a unit becomes part of the prospective tenant’s first month’s rent or security deposit.

Multifamily housing accommodation – a housing accommodation covered by the Act, as provided in § 4100.3, 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.

Tenant screening – any process used by a housing provider to evaluate the fitness of a prospective tenant.

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).