

GOVERNMENT OF THE DISTRICT OF COLUMBIA
RENTAL HOUSING COMMISSION



MEMORANDUM – PUBLIC

To: All Stakeholders

From: Daniel Mayer, General Counsel
Rental Housing Commission

CC: The Honorable Michael T. Spencer, Director and Chief Administrative Judge,
The Honorable Lisa M. Gregory, Administrative Judge, &
The Honorable Rupa Ranga Puttagunta, Administrative Judge
Rental Housing Commission
Lauren J. Pair, Rent Administrator
Department of Housing & Community Development

Date: November 23, 2021

RE: Rental Housing Commission 2021 Rulemaking – Essential Updates (GC Memo 21-1)

On **December 31, 2021**, two major changes to District’s rental housing laws will happen: one, the COVID-19 rent freeze will lift, and housing providers will be allowed to send 30-day notices of rent increases to tenants; and two, a major overhaul of the implementing regulations under the Rental Housing Act of 1985 will go into effect.

The Rental Housing Act of 1985 (“Act”) governs evictions and tenant rights, creates a Rent Stabilization Program (often called “rent control”) for certain housing accommodations and allows exemptions for others, and requires all housing providers to register with the Rental Accommodations Division (“RAD”) of the Department of Housing and Community Development. The Rental Housing Commission (“Commission”) issues, rescinds, and amends rules, found at **14 DCMR chapters 38 to 44**, that clarify the details of how the Act applies and how complaints under the Act are resolved.

The Council of the District of Columbia has made over 20 permanent amendments to the Act since 2006, and the Commission has been working for several years to update the rules. Three proposed rulemakings were published for public comment, and a final rulemaking is being published in December 2021. The rules, including the proposals and public comments, can be found at <https://rhc.dc.gov/page/rental-housing-act-and-regulations> or <https://dcregs.dc.gov>.

This memorandum provides a **limited summary of significant changes** that will immediately affect housing providers’ and tenants’ rights as the rent freeze is lifted and the eviction moratorium continues to phase out. It is for **background information only**: the actual text of the rules is controlling.

If you have an **existing case or claim** under the Act that arose or was filed before December 31, 2021, it is likely the new rules will not apply. Section 3800.10 of the new rules addresses this in detail. However, the Commission or another agency may look to the new rules as guidance.

IMPORTANT: the new rules DO NOT reflect any temporary or emergency laws currently in place. The Council has passed an unusually large number of temporary and emergency laws during the COVID-19 pandemic, many of which are still in effect. The Commission has been working for several years to produce these revisions simply to bring the rules into line with the permanent laws enacted by the Council and interpretations by the courts. You must follow both the new rules and all applicable acts of the Council.

Rent Adjustments (rent stabilized only)

- Housing providers **must use the RAD Form 8** to give tenants notice of a rent increase (see § 4205.4).
- Notice may be **served electronically**, if the tenant has agreed in writing ahead of time to receive electronic notice (see § 4200.16). For example, e-signature services like DocuSign® or Acrobat® may be used but are not necessary; a tenant may agree by email and may be emailed any relevant documents after that.
- Rent **decreases must be filed using RAD Form 9** (see § 4204.11). That is, the recorded “rent charged” for a rental unit should always match what is currently demanded or received from the tenant.
- Each annual CPI-W adjustment **must be taken during its effective year**, May 1 to April 30, and is forfeited if not used (see § 4204.9). This does not change the rule that only one rent increase is allowed every 12 months; housing providers with petition-based rent increases will need to elect which increase to implement.
- Vacancy adjustments must be filed using RAD Form 9 **within 30 days of the vacancy** (see § 4207.4). A housing provider may file Form 9 with the maximum allowable vacancy adjustment, but the RAD Form 4 new-tenant disclosures must state the actual rent charged to the new tenant and the final vacancy adjustment amount (see § 4207.7 & .8).

Notices to Vacate (evictions)

- Several **temporary and emergency laws** are in effect: consult the text of the Act online at <https://code.dccouncil.us/us/dc/council/code/titles/42/chapters/35/subchapters/V> and other guidance before taking action. This includes the Fairness in Renting Emergency Amendment Act of 2021, DC Act 24-186, which brings **nonpayment cases** under the Act, contrary to the revised rules (see § 4300.2). The emergency laws control.
- The use of RAD Forms is **recommended but not required**. Housing providers may draft their own notices, but a notice **must include all elements required by §§ 4301 or 4302**. Be sure to use an updated form or other standard notice, or check whether the required elements have changed before using an older form.
- For lease violations and other reasons for evictions, the new rules clarify that the notice must **explain the factual basis clearly** enough for “a reasonable person in the circumstances” to know why the notice is being sent (see §§ 4301.4 & 4302.1).

- The new rules clarify the meaning of “**personal use and occupancy**” and the affidavit requirements when filing a notice with RAD based on an owner’s or purchaser’s intent to move into a rental unit (see § 4300.9).

Registration (all units)

- Housing Providers now have **15 days after receiving a registration or exemption number** from RAD to post or serve a copy of a Registration/Claim of Exemption Form (see § 4101.6). This removes the “prior to or simultaneous” notice and filing requirement. For single rental units or housing accommodations where posting is impractical, electronic service with tenant consent is allowed.
- If a housing provider failed to register or to give a tenant notice of an exemption from rent control, the housing provider **may not raise the rent until 90 days after correcting the error** (see §§ 4101.8 & 4106.8).
- For the subsidy exemption, the new rules clarify that, for a tenant with a voucher, the whole housing accommodation should remain registered for the Rent Stabilization Program, but the housing provider must **file an Amended Registration Form for the subsidized unit to claim the exemption** and within 30 days of the subsidy ending.
- For the small landlord exemption, new rules explain how to determine if an “indirect interest” in a rental unit counts towards the 4-unit, 4-owner limit (see § 4107.9-.13). Units owned by a housing provider’s **spouse, by a trust, or by a business association** owned by the housing provider must be counted.
- The contact information required for each housing provider on a Registration/Claim of Exemption Form is clarified and expanded, including **email addresses, phone numbers, and registered agent** information (see § 4102.6).

Administrative Filings

- Many documents **may now be filed by email** with RAD, dhcd.rad@dc.gov, or the Commission, rhc.clerk@dc.gov, but must comply with the formatting requirements in the rules (see § 3801.10 & .10 for Commission; see § 3901.10, .12, & .13 for RAD).
- Sensitive **personal information should be redacted** from petitions or other filings with RAD (see § 3901.17).
- The Commission and RAD rules now **calculate deadlines using calendar days** by default, rather than business days, and allow five extra days to respond to anything that was served by mail (see §§ 3816 & 3912).
- Filing an appeal with the **Commission will automatically stay the order** from going into effect (see § 3805). This was previously the case with rent refunds, but now applies to all orders.