Chapter 38: Rental Housing Commission Operations & Procedures

3899 Definitions

3899.2

Capital Improvement. The word 'replacement' should be deleted from the phrase "other than ordinary repair, replacement or maintenance.' Replacement of a roof or boiler, for example, has been consistently treated as a capital improvement and is certainly depreciable under the Internal Revenue Code.

Condominium. The last sentence adds nothing and is repetitive.

Dormitory. Consider including instructors as well as students in counting the percentage.

Hardship adjustment. This is an unnecessary definition. The term is not used in the remainder of the Regulations.

Housing accommodation. If the definition in the law is repeated here, it might be better to include the entire definition, including the provision about sales tax.

Housing provider. The last phrase, 'any agent of a housing provider,' is circular. It would be better to use the definition in the law.

Qualifying income. There is a typographical error in this definition. Also, it would be better to add a reference to the Code section at the end to avoid confusion in the calculation (one doesn't, for example, add 10% for one more person and then add 10% of the result for the next person).

Related service and facility. Related services and facilities are distinguished from optional services and facilities in RAD operations (see Form 1, for example). It would be useful to define also Optional services and Optional facilities.

Rent and Rent charged. These two terms as separate terms are a holdover from when the Code and Regulations addressed rent ceilings as well as rent charged, but the definitions in the Code are now essentially identical. To avoid confusion, it would be better in the Regulations to define 'Rent charged' as 'Rent.' It would also be better to use the definition of Rent set forth in the Code.

Adding the fees to the definition means that when the market is soft, as it often is, a housing provider would be able to combine mandatory fees with a rent below the maximum allowable rent. Then, upon a subsequent vacancy or annual increase, if the market has improved, the housing provider, when computing the new rent, would be able to combine the fees with the prior rent as the basis for calculating the new allowable rent. The result would be an increase that appeared to be too large but would be technically correct, leading to confusion. It would be better to use the definition of Rent set forth in the Code.

Treatment of various fees is better left to the operative sections of the Regulations, not the definitions.

Similarly, the text related to the calculation of increases relative to a rent surcharge

should be put in an operative section of the Regulations, not the definitions.

Rent adjustment. A rent adjustment is simply an increase or decrease in the rent. It is not the legal basis for such a change. The Code and Regulations are the basis for such a change. (See the definition of Vacancy adjustment, for example.)

Rental unit. It would be better to present the examples of rental units as "any room, suite of rooms, apartment, duplex or single-family house and any terrace, balcony or land appurtenant thereto."

Tenant association. It would be helpful to add to the definition an explanation whether a tenant association represents only its members or the entire population of tenants in the same housing accommodation, and if the latter under what conditions.

Transient occupancy. The term 'transient occupancy' is used only in the definitions and could be eliminated as a definition by adding the text about sales tax to the definition of Housing accommodation as above.

Voluntary agreement. To be consistent with other text the word 'renovation' should be added (see Capital improvement, for example).

Chapter 39: Rental Accommodations Division

3901.11 The last sentence should be deleted to make the filing consistent with DC Superior Court, which allows filing until midnight.

Chapter 41: Coverage & Registration

4100.2 This section is a duplicate of the prior section and should be deleted.

4101 Registration Requirements

In general, this section includes too much of registration procedure, which should be in the following section 4102, Registration Procedures.

4101.2 This section should be moved to be the first section under 4102.

4101.3 Two comments:

This paragraph could be improved for readability and logical consistency as, "The registration requirements of this chapter shall ~~be satisfied for~~ apply to any newly established rental unit, any converted rental unit subject to § 208(b) of the Rental Housing and Sale Act of 1980 (D.C. Official Code § 42-3402.08(b)), any rental unit that 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 any rental unit that has not been previously~~, properly~~ registered. ~~only if the following occurs:~~" and by deleting the remainder, which would be covered under Section 4102, Registration Procedures.

4101.4 (b) Shouldn't 'Emergency' be deleted? The Act superseded and incorporated the provisions of the Emergency Act.

4101.5 Two comments:

This paragraph should be moved to Section 4102, Registration Procedures.

Looking forward to the electronic database, that database will not include electronic access to data filed before the deployment of the database. Accordingly, the text should say –

"All Rent Stabilization Registration Forms and 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. Registration data filed after deployment of ~~and by~~ the internet-accessible database maintained by the Rent Administrator in accordance with § 203c of the Act (D.C. Official Code § 42-3502.03(c) and § 3900.9 of this title shall be accessible and available for public inspection through an internet connection."

4101.6 Two comments:

This paragraph should be moved to Section 4102, Registration Procedures.

This requirement most likely will not work as written because RAD will likely not apply a registration or exemption number until after RAD has reviewed the submission, which could consume most or more than the fifteen days. Either the forms should be made available to tenants within fifteen days of filing without the requirement for numbers, or the forms should be made available to tenants within fifteen days after RAD has accepted the submission and applied numbers. Also, the 'date-stamp' language may not be consistent

with electronic filing. Also, once electronic filing is deployed, it would be consistent with that system to introduce electronic means of making the submission available to tenants. Suggested text is therefore –

"A housing provider who files a Rent Stabilization Registration Form or Claim of Exemption Form under the Act shall, within fifteen (15) days of ~~the~~ filing ~~date~~, ~~as indicated by the Rental Accommodations Division date-stamp,~~ provide a true copy of the form ~~bearing the registration or exemption number from the Rent Administrator~~ 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 rental unit or housing accommodation 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 the 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 <u>on each tenant</u>.

"<u>(c) Upon deployment of the internet-accessible database, by posting or sending to each tenant as provided above a link to the database containing the forms.</u>"

4101.7 This paragraph should be moved to Section 4102, Registration Procedures.

4101.8 Consistent with the other changes recommended, this text should be simplified to read –

"Any housing provider who has failed to meet the registration requirements of this chapter, ~~until a Rent Stabilization Registration Form or Claim of Exemption Form is properly filed in accordance with § 4101.2 and after notice has been posted or mailed in accordance with § 4101.6,~~ shall not be eligible for and shall not file or implement any increase in the rent charged or change in related services or facilities for a rental unit ~~that is not properly registered~~, regardless whether ~~or not~~ the rental unit may be eligible for an exemption ~~from the Rent Stabilization Program~~."

4102 Registration Procedures

In general, following the foregoing recommendations, this section would now begin with renumbered Section 4101.2 followed by renumbered Sections 4101.6 and 4101.7. Renumbered 4101.5 would go to the end of the section. Other sections would be renumbered.

Also, there should be in the registration procedures a method for designating those rental units that are exempt at the time of registration, for example those for which the rent is federally or District-subsidized (where the tenant holds a Section 8 voucher). A

recommendation –

"4102._ In a housing accommodation that is subject to the Rent Stabilization Program if there are rental units that are exempt under § 4106 they shall be noted as 'exempt' along with a citation of the section of the Act that is the basis of the exemption."

4102.2 For simplicity the text should be changed to "shall be <u>separately</u> registered," deleting the repetition of the forms.

4102.3 For simplicity the text should be changed to "the housing provider shall register the complex," deleting the repetition of the forms.

4102.4 Shouldn't this apply to cooperative units as well?

4102.6 Insert an initial subparagraph to read –

"(a) The identity of the housing provider including 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,"

and add 'or housing provider' to the last subparagraph.

4103 Changes to Registration & Claim of Exemption Forms

This section is ambiguous as to the means for registering the changes in exemption arising from tenants whose rent is individually and particularly federally or District-subsidized (where, for example, the tenant holds a portable Section 8 voucher) and who move into or out of a housing accommodation. In a large housing accommodation there may be changes as frequently as monthly. Section 4103.1 provides for amendment of a registration under circumstances that do not include a change in exempt status; and Section 4103.2 requires a new registration upon a change in exempt status of a housing accommodation but does not address the exempts status of an individual rental unit therein.

There should be a provision allowing the filing of an amendment to a registration in the case where the exempt status of an individual rental unit changes but the exempt status of the housing accommodation as a whole does not, as is allowed by § 42-3502.05(g-1)(1).

4107 Small Landlord Exemption

4107.16 There appears to be a verb missing. Except in the phrase 'small landlord exception,' 'landlord' should be 'owner.' There does not appear to be any statutory basis for this interpretation.

4111 Disclosures to New and Current Tenants

4111.2 This section would be more useful if presented in a sequence in which those items that apply to all rental units are first and those that apply only to units subject to the Rent stabilization Program follow. Using the subsection designations under 4111.2, the sequence would then be –

For all rental units:

(e) Whether subject to the Rent Stabilization Program
Business license
Registration or claim of exemption form

(i) Condominium or cooperative

(j) Ownership information

(h) Application fee and security deposit

(a) The rent

(f) Violations

For rental units subject to the Rent Stabilization Program:

(b) Petitions pending

(c) Surcharges in effect

(d) Frequency of rent increases

(g) Pamphlet

(l) Bill of Rights

A sample Applicant Disclosure Form is attached as an exhibit demonstrating that the foregoing requirements can be satisfied on a two-page form, which should be adopted as the official form.

Section (k) should be deleted as it is not required by law.

4111._ A section should be added to the effect that for the registration form, claim of exemption form, violation notices and pending petitions, it shall be sufficient to satisfy the disclosure requirement if the tenant is shown a copy of the document and is offered a copy and so acknowledges, which is the current practice of RAD.

4111.4 A subparagraphs (d) should be added to read –

"(c) Upon deployment of the internet-accessible database maintained by the Rent Administrator in accordance with § 203c of the Act (D.C. Official Code § 42-3502.03(c) and § 3900.9 of this title, it will be sufficient to satisfy a disclosure requirement by posting or sending to each tenant a link to the database for any information required to be disclosed that is available to the public on the database."

District of Columbia Department of Housing and Community Development
Housing Regulation Administration – Rental Accommodations Division (RAD)
1800 Martin Luther King Jr. Avenue SE, Washington, DC 20020
(202) 442-9505

Sample Applicant Disclosure Form

Housing Accommodation: _____ Rental Unit: _____

_____ Date: _____

In accordance with the provisions of the Rental Housing Act of 1985 as amended (the "Act"), the housing provider makes the following disclosure (a) to the undersigned prospective tenant(s) at the time the undersigned file(s) an application to lease a rental unit or (b) to the undersigned tenant(s) currently occupying the rental unit, not more frequently than once every twelve months, within ten days of request.

1. The housing accommodation is [check one] __rent-controlled/__exempt.

2. A copy of the current business license is attached.

3. The undersigned acknowledge(s) having been shown the Rent Stabilization Registration Form or Claim of Exemption Form and any amendments thereto and having been offered a copy of the form or forms.

Initials

4. The housing accommodation – [check as applicable]

__ is registered as a [check one] __condominium/__cooperative.

__ is converting to a condominium or cooperative or non-housing use.

5. The owner of the housing accommodation is –

_____ [name]
_____ [address]
_____
_____
_____ [telephone number]

6. The amount of the non-refundable application fee is $_____. The amount of the initial security deposit is $_____. The amount of the security deposit cannot exceed the first full-month of rent. For any tenancy of twelve months or longer, interest on the security deposit shall accrue at the passbook rate prevailing in the DC financial institution in which the funds are held, which rate is re-set every six months (1 January and 1 July). Within forty-five days after the termination of the tenancy, the housing provider will either (a) return the security deposit plus any interest to the tenant or (b) notify the tenant of the intent to withhold the deposit for defraying expenses incurred pursuant to the lease. If the housing provider intends to withhold the deposit, then within thirty days after notice to that effect the housing provider will give the tenant an itemized statement of the expenses to which the deposit was applied and refund any remaining balance to the tenant.

7. The applicable rent for the unit at the date of this disclosure is $_____.

8. The undersigned acknowledge(s) having been shown all Housing Violation Notices issued by the Department of Consumer and Regulatory Affairs within the last twelve months and any Notices issued earlier but still outstanding, and having been offered copies.

Initials

Note: The following information applies only to rent-controlled housing accommodations.

9. The following petitions or proceedings are pending that could affect the rental unit, whether the rent charged, the services and facilities provided, or other matters:

Case Number	Type of Petition/Proceeding
_____	_____
_____	_____

Initials

For any petitions or proceedings listed, the undersigned acknowledge(s) having been shown the petitions or proceedings and having been offered a copy of the petitions or proceedings for the undersigned.

10. The following surcharges (rent increases that will subsequently be rescinded) are in effect for the rental unit:

Case Number	Type of Surcharge	Amount of Surcharge	Date of Rescission*
_____	_____	_____	_____
_____	_____	_____	_____

* The date of rescission is projected; the actual date will be determined based on the applicable law and regulations.

11. Except for a rent increase upon vacancy, the rent charged for a rental unit under rent control may be increased no more frequently than once every twelve months.

12. The undersigned acknowledge(s) receipt of a pamphlet, "What You Should Know About Rent Control in the District of Columbia," published by the Rent Administrator explaining the Act and any regulations under the Act as they relate to implementation of rent increases and petitions permitted to be filed by housing providers and tenants.

Initials

13. The undersigned acknowledge(s) receipt of the Tenant Bill of Rights published by the Office of the Tenant Advocate.

Initials

The undersigned acknowledge(s) receipt of this disclosure form, the attachment. The Tenant Bill of Rights and the pamphlet published by the Rent Administrator. The undersigned acknowledge(s) having been shown the other documents, having been offered copies of those documents and having received any copies of documents requested by the undersigned as set forth above.

_____	_____
Tenant	Tenant
Printed Name: _____	Printed Name:
_____	
Date: _____	Date: _____

Chapter 42: Rent Stabilization Program

4200 General Overview

In this section there should be a basic explanation of the rent, the limitations on adjustments, and the resulting rent, distinguishing between permitted increases and increases actually taken. Here is a suggestion:

"4200.11 The Rent Stabilization Program restricts when rent may be increased and the amount it may be increased; rent may be decreased at any time and in any amount. As and when permitted by the Rent Stabilization Program, a housing provider may increase the rent by any amount up to the maximum increase authorized. Once an increase in rent has been implemented pursuant to a single authorization under the Rent Stabilization Program, no further increase is permitted under the same authorization, even if the housing provider did not take the full amount allowed. The rent resulting from an increase or a decrease becomes the new rent and is the basis on which any subsequent increase in rent is authorized."

4204 Authorization & Filing of Rent Adjustments Generally

4204.10 This provision is contrary to law; the requirement to file a Certificate of Notice of Adjustment in Rent Charged is within thirty days after the effective date of the increase, not before. Thirty days before is also a practical impossibility. Because the same requirement applies to vacancy increases, this provision can be simplified to cover all increases.

A provision should be added to contemplate electronic filing. Here is a suggestion:

"4204.12 Upon deployment of the internet-accessible database maintained by the Rent Administrator in accordance with § 203c of the Act (D.C. Official Code § 42-3502.03(c) and § 3900.9 of this title, a Certificate of Notice of Adjustment in Rent Charged may be filed electronically directly into the database."

4205 Notice & Implementation of Adjustments to Rent Charged

4205.4(a) It is preferable to minimize the form and contents of the Notice to Tenant of Adjustment of Rent Charged set forth in the regulations. The Notice form will be issued by the Rent Administrator, and in composing the form practical difficulties may become evident in fitting all the desired elements on two pages. The Commission can publish the form for comment in the same fashion as were the regulations.

4205.6 This section is not properly structured; sub-paragraph (b)(2) is not a subset of vacant unit adjustments, for example. With the following correction, the section can be simplified.

4205.6(b) The effective date of a vacancy adjustment should be the date the new rent is due, just as in other adjustments. There is no basis for a different effective date, and the draft requirement presents large practical difficulties. If a housing provider must state the new rent before leasing to a tenant, for example, the housing provider would, as a practical matter, state the largest rent allowable. Then, if the tenant negotiates a lower rent, the

housing provider must file an amendment to the form or change the rent on the next form filed, adding to administrative confusion and burden with no public-policy gain.

4206 Rent Adjustments of General Applicability

4206.3(a) It would be helpful to set forth the formula to use in calculating the percent increase in CPI-W. A calculation is necessary because the Department of Labor does not publish a year-end figure for the specified area (figures are published every other month, and for our area for November and February) and because the method used by the Commission has not been consistent over the years (some methods were idiosyncratic). Here is a suggestion:

"4206.3(b) The increase in CPI-W shall be calculated as follows. First, calculate an index for December of each year by averaging the adjacent indexes for November and February. Second, determine the change in the index by subtracting the December index of the prior year from the December index of the most recent year. Third, divide the change in the index for the most recent year by the December index of the prior year, to obtain the increase as a decimal amount. Fourth, multiply the decimal amount by 100 to obtain the percentage increase."

4206.8 There is no statutory basis for the retroactive application of a protected status. The provision is prospective.

4207 Vacancy Rent Adjustments

4207.3 "Surcharge" should be "increase" and "authorized" should be "implemented" to conform with the law.

4207.4 See comment 4205.6(b) above. The effective date of a vacancy adjustment should be the date the new rent is due, just as in other adjustments.

4207.7 This provision could be simplified and clarified by, in (b), adding "and percentage" after "amount" and deleting (c).

4209 Petitions Based on Claim of Hardship

There are many comments to this section because the proposed regulations impose limitations on the hardship process in excess of those stipulated in the Act.

In general, a hardship petition does not lead to a rent surcharge, it leads to a rent increase. Throughout Section 4209 "surcharge" should be changed to "increase" (18 incidents).

Somewhere in this Section 4209 should be stated how to translate the hardship petition as submitted and approved into a rent increase applicable to each rental unit, perhaps after 4209.31. Here is a suggestion, with options:

"4209.__ To calculate the allowable increase in rent for the rental units pursuant to a hardship petition the following is the procedure to follow, subject to all other provisions of § 4209:

"(a) Determine the equity in the housing accommodation.

"(b) Multiply the equity by 12% (0.12) to determine the income or cash flow which would produce a 12% return.

"(c) Determine the income or cash flow that the housing accommodation produced during the Reporting Period.

"(d) If the income or cash flow of the housing accommodation during the Reporting Period is greater than that which would produce a 12% return, no increase in rent may be authorized by the hardship petition.

"(e) If the income or cash flow of the housing accommodation during the Reporting Period is less than that which would produce a 12% return, subtract the income or cash flow for the Reporting Period from that which would produce a 12% return to compute the difference, which is the gross rent increase allowable under the hardship petition.

"(f) [Favored option] Divide the gross rent increase allowable by the number of rental units in the housing accommodation to compute the rent increase allowable for each rental unit.

"(f) [Disfavored option] Divide the gross rent increase allowable by the total rent from rental units during the Reporting Period. The quotient, as a decimal or percentage, is then applied to the rent of each rental unit to compute the rent increase allowable for each rental unit.

"(f) [Other option] The housing provider shall allocate to each rental unit an increase in rent provided that the sum of the increases does not exceed the gross rent increase allowable under the petition.

The favored option is favored because it is easier to compute, easier to understand and more equitable among the tenants. The other option, which seems to be contemplated by § 4209.37(c), is the option most likely to yield a return to the housing provider that approaches the 12% return authorized by law.

4209.3 This section should be deleted. There is no statutory basis for these limitations on filing a hardship petition. Section 4209.3(b) would have the practical effect of prohibiting forever a hardship petition, because rent increases on individual rental units occur throughout the calendar year, typically on the anniversary of the last vacancy increase. A regulatory provision should not abrogate a right granted by law.

4209.4 This provision is not based on the Act.

4209.5 Change "file" to "prepare" in order to address filing later. Change to "a form similar to" with reference to Form FP-308. The form is not currently accessible online, but the line items may differ from the requirements of the rent-control law. A copy of an earlier form (before the commencement of online filing) is attached as a sample.

4209.6 Shouldn't the instructions be in the regulations?

4209.7 This provision should be deleted. There is no statutory requirement that the accounting method used in a hardship petition be the same as in filing income tax. Also, although the accrual method is commonly used in tax reporting and is required for larger incomes, the cash method is more appropriate for a hardship petition for the reason alluded

to in 4209.9; it is difficult to present, explain, document and agree upon the pro-rating of expenses that do not apply entirely within the accounting period, and most tenants are not familiar with accrual accounting and how such pro-rating is properly done.

4209.8 This provision should be deleted. Accrual accounting is a term well understood by accountants and administrative law judges, and if the intent of the regulation is to impose a more restrictive definition than that used by accountants, the regulation is improper.

4209.10 This provision should be deleted. Again, cash accounting is a term well understood by accountants and administrative law judges.

4209.12 Move the definition '("Reporting Period")' to follow immediately after "twelve (12) consecutive months."

4209.12(a) More proper terminology, considering the use of both cash and accrual accounting, would be to change "income" to "receipts or revenue;" admittedly, however, the City Council was not so correct.

4209.13(a) Change "may be charged" to "charged". Once a rent is set, regardless whether at the maximum allowable at the time, that rent cannot be further increased under the same authorization. The phrase "may be charged" may lead to an incorrect understanding.

The additional provision about surcharges should be deleted. There is no statutory basis for that provision. Once the rent for a tenant is set, either it includes a surcharge or it doesn't. If it doesn't, the rent cannot be further increased under the same authorization and therefore meets the "maximum" definition in the law for the Reporting Period.

Subsection (a)(2) is ambiguous and should be deleted. If the intent is to calculate as rental revenue or receipts the difference between the rent actually charged and the rent that might have been charged had the tenant not been a protected tenant, there is no statutory basis for the provision. The rent cannot be further increased under the same authorization and therefore meets the "maximum" definition in the law for the Reporting Period.

4209.13(b) Similarly, this provision has no statutory basis and should be deleted. Once the rent for a tenant is set, either it includes an implemented preserved rent ceiling adjustment or it doesn't. If it doesn't, the rent cannot be further increased under the same authorization and therefore meets the "maximum" definition in the law for the Reporting Period. (The concept in the proposed regulation is a holdover from the time of rent ceilings, when rent ceilings could be added together and the rent raised to the ceiling; that situation no longer exists.)

4209.14(b) This provision has no statutory basis and should be deleted. If, for example, all potential parking space rental charges are to be included, there should be a deduction allowed for vacancy, but there is no such provision in the regulations. (Such a vacancy allowance would be large because with car sharing services and temporary-use bicycles and scooters, most apartment building parking lots have high vacancy.)

4209.15 To be consistent with 4209.20(a), it would be helpful to add "rent for rental units occupied by on-site employees" to the list of operating expenses.

4209.16(g) The addition of "this Act" is not supported by the law and should be deleted. The law is specific to housing regulations.

4209.17 The addition of pro-rated salaries of off-site personnel could be a reasonable protection if applied to "property management" personnel, but not "administrative" personnel. Would fees based on hours worked paid to a CPA preparing tax returns be construed as pro-rated salaries of off-site administrative personnel?

4209.18 If the petitioner must decide between cash and accrual accounting, this provision is potentially contradictory and should be deleted.

4209.19 Text from 4209.18 would then be appropriate here.

4209.21 This provision is both confusing and incorrect.

In cash-basis accounting, rent was either received during the Reporting Period or it wasn't. The rent received would include any delinquent rent from a prior period collected during the Reporting Period, which would more or less offset any rent delinquent in the Reporting Period and collected in a later period. Therefore, the provision to report rent subsequently collected is unnecessary and disadvantageous to the housing provider if applied (the housing provider would be reporting cash collected from delinquencies both before and during the Reporting Period).

In accrual accounting, rent is treated as received until it is determined that it is uncollectible. In a process similar to cash accounting but opposite in direction, some rent that was assumed to be received in a prior period may be found to be uncollectible in the Reporting Period and will therefore appear as uncollected in the Reporting Period, but some rent that appears as received in the Reporting Period will in a subsequent period be found to be uncollectible and will more or less offset the rent from a prior period found to be uncollectible in the Reporting Period. Therefore, the provision to report rent subsequently collected would make no sense in an accounting convention in which rent is assumed to be collected until later found to be uncollectible and would be disadvantageous to the housing provider if applied (the housing provider would be reporting rent from the Reporting Period and double counting the same rent if it were later determined to be uncollectible).

Again, cash accounting and accrual accounting are terms well understood by accountants and administrative law judges. It would be better not to attempt to redefine these terms. This provision should be deleted.

4209.25 The phrase "or any other claim or liability that is attached to the real property" is too broad and should be deleted. A lawsuit claiming $1 million in damages and supported by a *lis pendens* filing might be construed as an encumbrance under the added text, but surely that is not the intent of the law. 'Equity' is a broadly understood term to mean the value of a property less financing encumbrances.

4209.28 This provision should be revised to cover both cash and accrual accounting methods and to improve the usability of the data by the following modifications and additions:

(a) Copies of ~~bills~~ invoices, statements or other requests for payment ~~received~~ for the housing accommodation paid or accrued during the Reporting Period;

(b) Copies of cancelled checks or records of electronic transfers for the invoices, statements or other requests for payment paid or accrued during the Reporting Period; ~~and~~

(c) Copies of bank statements for the housing accommodation during the Reporting Period;

(d) Copies of ~~ledgers, journals, or other internally generated records on~~ property management financial statements showing the financial transactions of the housing accommodation for each month during the Reporting Period; and

(e) A worksheet in Microsoft Excel® or compatible electronic format showing the expenses paid or accrued during each month of the Reporting Period.

4209.30 There are two functions contained in this provision; one is the submission of the petition and documents to RAD and the other is the notice to the tenants. They would be better set forth as follows:

"4209.30 To file a hardship petition a housing provider shall submit the following documents to the Rent Administrator:

"(a) The completed Hardship Petition Form;

"(b) The substantiating documentation; and

"(c) Copies of the certificate of occupancy and housing business license (where applicable). [Note: the license is proof of payment of the annual registration fee.]

The documents may be submitted to the Rent Administrator in one of two methods:

"(a) Two copies of all documents on paper; or

"(b) One electronic copy of each document in .pdf or compatible format submitted by e-mail or by a portable USB-compatible electronic memory drive, as the Rent Administrator may direct.

"For either submission, the electronic worksheet shall be submitted in Microsoft Excel® or compatible formats such as .xlsx, .xls, .prn or .csv by e-mail or by a portable USB-compatible electronic memory drive, as the Rent Administrator may direct."

"4209.31 Promptly after the hardship petition is filed, to facilitate notice to tenants, a housing provider shall also submit the following to the Rent Administrator:

"(a) The most recent rent roll for the housing accommodation showing tenants by name and rental unit number; and

"(b) Copies on paper of the Hardship Petition Form as submitted and received by the Rent Administrator, which may be printed back-to-back, one for each rental

unit in the housing accommodation; and

"(c) Envelopes with first-class postage pre-paid adequate to mail the Hardship Petition Form plus those documents required by §4209.3_, one addressed to each tenant in the housing accommodation as shown on the rent roll."

The petition copies and envelopes are delivered promptly after the filing to permit copying the petition showing evidence of receipt by the Rent Administrator.

4209.31 Add, at the end of the section –

"(d) A copy of the hardship petition as filed with the Rent Administrator."

4209.33 This provision is improper for several reasons. (1) There is no statutory basis for a stay of the conditional increase in rent; the statutory protection is the 5% provisional increase limit for a housing provider losing money and no provisional increase for a housing provider making money combined with subsequent modification. (2) Under these proposed regulations the Rent Administrator would already have reviewed the petition filing and determined that it was properly filed. (3) To penalize the housing provider for failing to give notice to tenants when that responsibility is assigned to the Rent Administrator under these proposed regulations is unconscionable. (4) If the Rent Administrator discovers the need for further information or supporting documentation, the appropriate action would be to request it, not suspend the process. (5) There is no procedure stated for lifting such a stay. (6) As a practical matter, as long as the Rent Administrator is understaffed and underfunded, there will be too great a temptation to issue a stay; the correct response is to adequately fund the agency. The proper procedure would be to resolve any uncertainties as quickly as practical. A recommendation is to change this provision to read as follows:

"4209.33 If during the preparation of the Audit Report the Rent Administrator discovers the need for further information or supporting documentation the Rent Administrator shall request the housing provider to provide such information or documentation."

The following provision would then be changed as follows:

"4209.34 If the Rent Administrator requests further information or supporting documentation and the housing provider fails to promptly provide such information or documentation, the Rent Administrator may issue an order staying the implementation of any provisional increase in rent until such information or documentation is provided. If the housing provider fails to provide such information or documentation within ten (10) days, the Rent Administrator may dismiss the hardship petition."

4209.35 The time for appeal should be changed to ten (10) days, and notice of the time for appeal should be provided along with the Audit Report and Proposed Order.

Add at the end of this provision, "Exceptions or objections shall specify the basis for the exception or objection as set forth in § 4209.37, shall describe in detail the error or discrepancy found and shall state whether a hearing is requested."

4209.37(g) There is no statutory basis for this objection. Substantial violations of the Housing Regulations are a reason to stay a rent increase, but do not prevent the filing, processing or conducting a hearing on a petition. This subsection should be deleted.

4209.38 This section should be revised and separated into two sections. Here is a recommendation:

"4209.38 If exceptions and objections have been properly and timely filed, the Rent Administrator shall promptly after the time for filing has expired transfer the exceptions, objections and hardship petition to the Office of Administrative Hearings. The Rent Administrator may reject any exception or objection that is not timely filed or does not comply with § 4209.35.

"4209.__ Upon receipt of a filing of exceptions and objections from the Rent Administrator, the Office of Administrative Hearings shall promptly assign the case to an Administrative Law Judge. The Judge shall conduct a hearing, if requested, within thirty (30) days after the filing of exceptions and objections and shall issue an order within ten (10) days after the filing or, if requested, hearing. The order shall make a dispositive ruling on all exceptions and objections and shall, if necessary, adjust the rent increases authorized by the hardship petition."

4209.39 Reference to § 4209.33 should be changed to § 4209.34 [see above].

4209.41 This provision should be deleted. A provisional order is meaningless. As § 4209.38 was revised above, the Administrative Law Judge should issue an order, not a provisional order. It is unrealistic to think that a provisional order will be issued before a notice of a conditional rent increase may be given (30 days to issue audit report and proposed order, 5 days to send to parties, 30/10 days to file an appeal, 5 days to transfer to OAH, 30 days to a hearing, 10 days to an order plus 30 days notice before rent increase).

4209.42 The initial phrase should be revised to read, "If a conditional rent increase is implemented pursuant to § 4209.39, it shall be implemented . . ."

4209.__ Add a provision at the end of § 4209 to the effect that a rent increase pursuant to a final order on a capital improvement petition may be implemented within less that twelve months following the implementation of a conditional increase.

APARTMENT INCOME & EXPENSE REPORT

DUE DATE: April 15, 2014

Reporting Period January 1, 2013 to December 31, 2013

Complete this report in accordance with accounting methodologies used for Federal Income Tax reporting. DC Code §47-821 stipulates that all information contained in this report shall be kept in strict confidence. **Failure to submit complete and accurate information requested by the above date is a violation of DC Code and will result in a ten percent penalty of taxes due assessed to your following year tax bill.**

Government of the District of Columbia
Office of the Chief Financial Officer
Office of Tax and Revenue
1101 4th Street, SW, Suite W550
Washington, DC 20024

Apartment Name	Square	Suffix	Lot

Premise Address

If your operation encompasses more than one Square, Suffix and Lot (SSL), you may list additional SSLs below. This will afford you filing credit for the parcels within the economic unit without the necessity of filing individual forms.

Owner:		
Address:		
Address:		
City:	**State:**	**Zip:**

CERTIFICATION
I certify under penalty of law that the information provided is true, correct and complete to the best of my knowledge and belief. Making a false statement as to material facts is punishable by criminal penalties, D.C. Code §22-2514

Management Company:		
Title/Relationship:		
Responsible Contact Person:	Phone:	
Address	State:	Zip:
Date:	Contact Person E-mail:	Owner's EIN#:

Type Name	Signature

List public utilities paid by tenant: _____

Is this property a participant in HUD or other Low-Income Housing Programs?

YES ☐ NO ☐

If yes, please indicate what type: _____

Summary of Rent Schedules:

In addition to completing the schedule below, please attach a copy of your rent roll as of December 31, 2013 to this report.

	Total # Units	Bath # Units	Rent Control # Units	Subsidized # Units	Market Rent # Units
Efficiency					
1 Bedroom					
2 Bedroom					
2 Bedroom &Den					
3 Bedroom					
3 Bedroom & Den					
Other (List):					
Total # Units					

Retail/Commercial:	# Units	Leasable SF	Rent/SF	Rent/SF	Rent/SF
Retail			$ -	$ -	$ -
Office			$ -	$ -	$ -
Other (List)			$ -	$ -	$ -

ANNUAL INCOME:			
1. Potential Gross Income (List current rent and vacant rent at 100% market)			$
2. Income Loss Due to Vacancy			$
3. Income Loss Due to Collection			$
4. Income Loss Due to Concessions			$
5. Income Loss Due to Employee Quarters	#		$
6. Total Actual Income			$
7. Miscellaneous Income (Retail/Commercial)			$
8. Miscellaneous Income (Parking, vending, laundry, etc.)			$
9. Utility Reimbursements			$
10. HUD Interest Subsidy Reimbursements			$
11. Other income			$
12. Total Actual Income			$ -
Expenses:			
13. Management			$
14. Administrative			$
15. Payroll			$
16. Corporate Suite Expense			$

Utilities:	
17. Water & Sewer	$ -
18. Electricity	$ -
19. Fuel (Type of fuel:_____)	$ -
Repairs Maintenance and Contract Services	
20. Maintenance Payroll/Supplies	$
21. Mechanical (HVAC, Electrical, Plumb)	$
22. Roof Repairs	$
23. Elevator (Parts, Labor, Contract Services)	$
24. Pool (Parts, Labor, Contract Services)	$
25. Redecorating Costs (Carpet, Paint, etc.)	$
26. Janitorial/Cleaning (Supplies and Contract Services)	$
27. Landscaping and Ground Services (Supplies and Contract Services)	$
28. Trash	$
29. Security	$
30. Other Maintenance Contract Services etc. (Must give itemized list)	$
Total Operating Expenses sum of Lines 13 Through 30	$ -
Fixed Expenses	
31 Insurance (One Year Fire, Casualty)	$ -
32. Miscellaneous Taxes (Non payroll, Non property tax)	$ -
Total Fixed Expenses sum of Lines 31 and 32	$ -
Replacement Reserves	
33. Annual Replacements Reserves $_____ per Unit #_____ Total	$ -
Capital Improvements	
34. Cost of Capital Improvements Incurred last 12 months (for Capital Improvements consideration itemized list required)	$ -
35. Cost of Future Capital Improvements (for future Capital Improvements consideration plan & itemized list required)	$ -
Annual Ground Rent	
36. List Annual Ground Rent If Applicable	$
37 Inception Date of Lease	
38. Ending Date of Lease	

MORTGAGE/SALES /MANAGEMENT INFORMATION

1. Is there a current mortgage on the property? Yes____ No____
2. If Yes, please provide the following data:

Name of Mortgage_____ Mortgage Amount_____ Interest Rate_____

Term of Mortgage_____

3. List the most recent partial or complete interest transfer of the real property of the last 3 years:

Purchase Date: _____ Purchase Amount:_____

Percent of Ownership: _____

4. Most Recent Professional Appraisal Date: _____ Value: _____

Appraisal Firm/Individual: _____

4210 Petitions Based on Capital Improvements

The general principle of a capital improvement petition is that a housing provider is allowed to recover the cost of a capital improvement through rent surcharges applied to the rental units. There are, however, limitations on the surcharges, and those limitations affect each rental unit differently depending on the rent of the rental unit. There are also instances that limit the cost recovery, such as vacancy, uncollectible rent and, because of the disparity in rents throughout a housing accommodation arising under rent control, maximum market rents. Accordingly, the only way to allow the housing provider to recover the cost of the capital improvement is to extend the duration of the surcharges that can be implemented until the full cost of the capital improvement has been recovered. The statute does not limit the term of the rent surcharge. This principle is recognized in §§ 4210.27 – 33.

4210.6 This provision should be deleted. Typically if a rental unit is to be renovated and the work is extensive, a housing provider will offer the tenant an alternative rental unit to occupy during the work. If the tenant accepts, the tenant moves voluntarily, usually with moving expenses paid by the housing provider and perhaps other financial incentives offered by the housing provider. That system normally works well. The essence of this provision 4210.6 is that a voluntary arrangement between a housing provider and tenant to facilitate the work would void the capital improvement petition.

There is no statutory requirement that the eviction procedure be used in advance of capital improvement petitions. The eviction procedure is solely for instances in which the tenant and housing provider cannot come to a satisfactory arrangement and the tenant refuses to vacate the rental unit to allow the work to be performed.

4210.12 Add a subsection (c) to read

"(c) The interest shall be calculated over the term as provided in § 4210.15 or § 4210.16, regardless of the estimated duration of the rent surcharge.

"(1) If the interest is determined based on a loan of money as provided in subsection (a) of this section and the principal of the loan is amortized based on level payments over a specified term, interest shall be calculated on the applicable principal of the loan as it is amortized over the specified term.

"(2) If the principal of the loan provided in subsection (a) is not amortized over a specified term or if the interest is determined under subsection (b) of this section, interest shall be calculated on the applicable principal as if on a loan fully amortized by level payments for the estimated duration of the rent surcharge."

4210.14 For clarity it would be better to have this provision follow §§ 4210.15 & 16.

4210.17 For clarity modify to read ". . . rent surcharge <u>for each rental unit</u> for a mandatory improvement . . ."

4210.19 Based on the principle set forth under 4200 above, it is not possible to calculate the duration of the surcharge in advance, nor is it possible to calculate a single duration for all rental units. It is, however, possible to calculate an estimated duration, either by rental unit or in the aggregate. Therefore this section should be modified to say:

"4210.19 The estimated 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 § **Error! Reference source not found.**; divided by

"(b) The sum of the monthly rent surcharges permitted by § **Error! Reference source not found.** on each affected rental unit, without regard to whether implementation of the surcharge is prohibited by § 4215."

4210.22 Change subsection (c) to read, "The dollar amount of the proposed rent surcharge for each rental unit and the percentage by which that dollar amount exceeds the rent charged before application of the surcharge."

4210.24(f) Change to ". . .estimated duration . . ."

4210.24(h) There is no statutory basis for this objection. Substantial violations of the Housing Regulations are a reason to stay a rent increase, but do not prevent the filing, processing or conducting a hearing on a petition. This subsection should be deleted.

4210.25 DC Code § 42-3502.10(e)(1) & (2) are best understood in combination as causing a properly submitted petition to be approved by action of law upon the failure of the Rent Administrator to render a decision within the specified time limit. This section should be corrected to so state.

4211 Petitions for changes in Related Services or Facilities

4211.2 There is no statutory support for the three-year rule in the second half of this sentence, which should be deleted. Unless the registration of the housing accommodation is amended or re-filed to include the added services or facilities, the registration should govern which services and facilities are included in the rent.

4211.3 Add at the end, "until restored or modified by a services or facilities petition.

4211.5 Delete "related."

4211.6 Delete subsection (d). Retaliation is a separate cause of action to be adjudicated according to § 4303. A services or facilities petition should be decided on its merits.

Delete subsection (e). 'Intent' is difficult to ascertain in any event, and 'intent to displace' would introduce a test that has no support in the statute.

4211.7 The law refers to "value," which gives primacy to subsection (c); the other two subsections should be given only as evidence supporting value or as guides in the absence of clear evidence of value. Subsection (a) should include 'increased' as well as 'reduced.'

4211.8 This section would be better stated as, "A services or facilities petition shall be adjudicated in conjunction with any related capital improvement petition." That is the current practice of RAD. It is not uncommon, for example, to increase the electrical service to a housing accommodation and at the same time individually meter electrical service to

rental units, in fact it is required by the DC Energy Conservation Code. A rent surcharge arising from the electrical upgrade should be offset by electricity expense switched to the tenants.

4211.10 Deleted subsection (d). There is no statutory basis for this objection. Substantial violations of the Housing Regulations are a reason to stay a rent increase, but do not prevent the filing, processing or conducting a hearing on a petition.

4212 Petitions Based on Substantial Rehabilitation

The recommendations under Section 4210 (Capital Improvements) are, for the most part, applicable to this section as well.

4213 Rent Adjustments by Voluntary Agreement

In general this section mistakenly assumes that tenants and a housing provider are unaware of their own best interests and unable to agree among themselves how they want to proceed and therefore creates an unnecessarily complicated and cumbersome process that is completely unlike any negotiation that actually takes place. The changes proposed bring the regulatory process better in line with actual practice and human behavior.

4213.1 Change "with the prior approval of the Rent Administrator" to "subject to the approval of the Rent Administrator." The is no provision for prior approval in the law and it makes no sense to approve an 'agreement' before it is negotiated and agreed upon.

4213.2 For the same reasons, change to read, "A housing provider, a tenant, or a tenant association may at any time initiate negotiation with the other parties to reach accord on a tentative voluntary agreement as described in this section. The tentative agreement shall be set forth in writing on or as an attachment to a form provided by the Rent Administrator and filed with the Rent Administrator ("Proposed Voluntary Agreement").

4213.3(e) This provision should be deleted. The determination of rental units that are comparable and proximate is subjective and gives too much latitude for determination whether a Proposed Voluntary Agreement is properly filed.

4213.4(a) This subsection should be deleted. It is entirely duplicative of § 4213.8 and serves no purpose in the process.

4213.5 Delete "and the service requirements of § 4213.4."

4213.7 Delete (see 4213.4(a) above).

4213.8 Delete "and the service requirements of § 4213.4."

4213.9 Add "further" before "discuss."

4213.10 Delete.

4213.11 Delete.

4213.12 Move this provision immediately after revised § 4213.2.

4213.13 Delete. Such service is better facilitated by someone other than the adjudicator.

4213.14 Add "initial" before second "Proposed Voluntary Agreement."

4213.16 Change "shall not be considered" to "shall be taken from the numerator and denominator."

4213.17 Change "No more than three (3) business days after the end of the Signature Collection Period" to "Once the initiating party has obtained sufficient signatures."

4213.19 Delete. Meaningless. The process for a voluntary agreement is stated.

4213.20 Delete reference to 4213.19 for same reason.

4213.21 Delete subsection (b). The City Council was carrying out the stated purposes when voting for the Act, which contains the voluntary agreement provision. This provision gives too much latitude for subjective ruling by a person not a party to an agreement.

Add another subsection, "(_) A Final Voluntary Agreement that gives preferential treatment to existing tenants relative to future tenants to avoid displacement of existing tenants shall not be deemed inequitable."

4213.22 Add at the end of this section

"(f) In determining reasonableness deference shall be given to the plain language of the Final Voluntary Agreement as the best evidence of reasonableness determined by the parties to the Agreement."

4213.24 Ten days is preferable.

4213.26 Deleted subsection (d). There is no statutory basis for this objection, and the law specifically designates elimination of deferred maintenance (ordinary repair) as a basis for a voluntary agreement. Substantial violations of the Housing Regulations are a reason to stay a rent increase, but do not prevent the filing, processing or conducting a hearing on a voluntary agreement.