

TITLE 14. HOUSING

CHAPTER 38: COMMISSION OPERATIONS AND PROCEDURES

3800 GENERAL PROVISIONS

- 3800.1 The Rental Housing Commission shall establish, with the approval of a majority of its membership, internal operating procedures for the handling of the Commission's business and the fair distribution of work among its members.
- 3800.2 The office of the Commission shall be open daily from 8:30 a.m. to 4:30 pm., except Saturdays, Sundays, and legal holidays.
- 3800.3 For purposes of chapters 38 through 44, all references to "the Act" shall mean the Rental Housing Act of 1985, D.C. Law 6-10 (effective July 17, 1985).

3801 PLEADINGS AND OTHER DOCUMENTS

- 3801.1 All pleadings and other documents to be filed with the Commission shall be filed by delivering it in person to the Commission staff at the North Potomac Building, 614 H Street, N.W., Washington, D.C. 20001, or by mail to Post Office Box 37200, Washington, D.C. 20013-7200, unless otherwise directed.
- 3801.2 No pleading or other documents shall be deemed filed until actually received at the Commission's office and compliance with time requirements shall be calculated from the date of actual receipt.
- 3801.3 All pleadings and other documents filed with the Commission shall be promptly date-stamped by the Commission staff and entered into the Commission's daily log.
- 3801.4 All pleadings and other documents filed by mail shall be accompanied by a self-addressed postage paid envelope and one (1) copy in addition to the copies required by § 3801.7 for mailing to the filing party by the Commission staff.
- 3801.5 The Commission's daily log shall be available for public inspection.
- 3801.6 The receipt of a pleading or other document which is not timely or which does not comply with the substantive requirements of this title shall not constitute a waiver of the requirements of this title; and any such pleading or document may be rejected by the Commission.
- 3801.7 Unless otherwise required, all pleadings and other documents shall be filed in an original and four (4) identical copies.

- 3801.8 All pleadings and other documents shall be served on the opposing party or parties prior to or at the same time as filed with the Commission and shall contain proof of service as required by § 3803.7.
- 3801.9 No fees shall be charged for the filing of any papers with the Commission.
- 3801.10 The forms contained in the Appendix of Forms when properly completed are sufficient under this title and are intended to indicate the simplicity and brevity of statement which this title contemplates.

3802 INITIATION OF APPEALS

- 3802.1 Any party aggrieved by a final decision of the Rent Administrator may obtain review of that decision by filing a notice of appeal with the Commission.
- 3802.2 A notice of appeal shall be filed by the aggrieved party within ten (10) days after a final decision of the Rent Administrator is issued; and, if the decision is served on the parties by mail, an additional three (3) days shall be allowed.
- 3802.3 The filing of a notice of appeal removes jurisdiction over the matter from the Rent Administrator; Provided, that if both a timely motion for reconsideration and a timely notice of appeal are filed with respect to the same decision, the Rent Administrator shall retain jurisdiction over the matter solely for the purpose of deciding the motion for reconsideration, and the Commission's jurisdiction with respect to the notice of appeal shall take effect at the end of the ten (10) day period provided by § 4014.
- 3802.4 The notice of appeal shall be served on opposing parties prior to or at the same time it is filed with the Commission and shall contain proof of service as required by § 3803.7.
- 3802.5 The notice of appeal shall contain the following:
- (a) The name and address of the appellant and the status of the appellant (e.g., housing provider, tenant or intervenor);
 - (b) The Rental Accommodations and Conversion Division (RACD) case number, the date of the Rent Administrator's decision appealed from, and a clear and concise statement of the alleged error(s) in the decision of the Rent Administrator;
 - (c) The signature of the appellant or the appellants attorney, or other person authorized to represent the appellant; and
 - (d) The signatory's address and telephone number.

- 3802.6 Any party upon whom a notice of appeal has been served may file an answer with the Commission within ten (10) days of service and shall serve a copy on the other parties.
- 3802.7 Parties may file briefs in support of their position within five (5) days of receipt of notification that the record in the matter has been certified.
- 3802.8 Parties may file responsive briefs within ten (10) days of service of the pleading to which the response is being filed.
- 3802.9 There shall be no reply to a responsive brief and the Commission shall not accept the brief if submitted.
- 3802.10 Any party appealing a decision of the Rent Administrator which orders the payment of money may stay the enforcement of such decision by establishing an escrow account or purchasing a supersedeas bond which complies with the requirements of § 3806 within five (5) days of filing the notice of appeal.
- 3802.11 The payment of money described in § 3802.10 shall include the award of rent increases to a housing provider. Establishment of an escrow account or the purchase of a supersedeas bond pursuant to § 3802.10 shall be based on at least six (6) months of the rent increase per party appealing; Provided, that the escrow account may be paid in monthly deposits during the pendency of the appeal and the appellee shall be notified of the deposits.
- 3802.12 Upon a proper showing, the Commission may waive the requirements, in whole or in part, of §§ 3802.10 and 3802.11.
- 3802.13 The Commission may dismiss the appeal for failure to comply with the requirements of § 3802.5.

3803 SERVICE OF PLEADINGS AND OTHER DOCUMENTS

- 3803.1 All pleadings and other documents required to be served upon any party under this chapter shall be served upon that party or shall be served upon the representative designated by that party as provided in § 3812 or by law to receive service of documents.
- 3803.2 When a party has a representative of record as provided in § 3812, service shall be made upon the representative.
- 3803.3 Service upon a person shall be completed in accordance with § 904 of the Act.
- 3803.4 Actual receipt of service shall bar any claim of defective service, except for a claim with respect to the timeliness of service.
- 3803.5 Service by mail shall be complete upon mailing.

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

3803.7 Proof of service upon parties shall be provided for all pleadings and other documents, shall be in writing, and shall show the date, person served, address at which service was made, and the manner of service.

3804 RECORD ON APPEAL

3804.1 Upon receipt of a notice of appeal, the Commission shall request in writing that the Rent Administrator forward the complete record of the case, including all tape recordings made at any hearing held before the hearing examiner.

3804.2 The Rent Administrator shall furnish to the Commission a written inventory of the contents of the record and shall certify the inventory as the complete and official record of the case.

3804.3 The record on appeal shall consist of the following:

- (a) The findings of fact and conclusions of law and the decision from which the appeal is taken;
- (b) The tape recordings or transcripts of the hearings before the hearing examiner;
- (c) All documents and exhibits offered into evidence at the hearing;
- (d) Memoranda, if any, of ex parte communications as required by § 3818;
- (e) Notices of hearings and proofs of service;
- (f) Landlord registration files and any other documents found in the public record of which the Rent Administrator took official notice; and
- (g) All pleadings filed with the Rent Administrator.

3805 STAY PENDING APPEAL

3805.1 A party appealing a final decision of the Rent Administrator which awards other than the payment of money as provided in §§ 3802.10 and 3802.11 may seek a stay of the final decision by filing a motion which complies with the provisions of this section and § 3814.

3805.2 A motion for a stay shall be filed within the time prescribed for filing a notice of appeal pursuant to § 3802.2. If a motion for stay is not timely filed, the final decision of the Rent Administrator shall be effective and the Commission may refer the matter for compliance procedures.

- 3805.3 The motion shall include arguments on the following:
- (a) The likelihood of eventual success of the moving party;
 - (b) The likelihood of irreparable injury to either party;
 - (c) The balancing of injury as between the moving party and the other party(ies); and
 - (d) The effect of a stay on the public interest.
- 3805.4 Pursuant to § 3814.6, the Commissioner assigned to decide the motion for stay, shall decide the motion without a hearing within ten (10) days after the motion is filed; the failure of the Commissioner so assigned to decide within the time limit provided shall constitute a denial of the motion.
- 3805.5 All parties to an appeal are required to comply with the decision or order appealed from, except when the parties meet requirements of §§ 3802.10 and 3802.11, or except when a stay has been granted by the Commission pursuant to § 3805.1.
- 3805.6 If a party comes before the Commission at a hearing on appeal and the provisions of §§ 3802.10, 3802.11 or 3805.5 have not been met, the Commission may decide the appeal or may refer the non-compliance to the Rent Administrator for action.
- 3805.7 Where a party who has filed a petition for review of a final decision and order of the Commission with the District of Columbia Court of Appeals seeks a stay from the Commission, in the first instance, pursuant to the Rules of the District of Columbia Court of Appeals, the Commission may grant a stay based upon the grounds set forth in § 3805.3.
- 3806 ESCROW ACCOUNTS AND SUPERSEDEAS BONDS**
- 3806.1 Whenever the Commission orders, or these rules require, that an escrow account be established by a party, the conditions set forth in this section shall apply.
- 3806.2 The amount of money specified in the order shall be placed in a bank or other financial institution within the District of Columbia.
- 3806.3 The deposit shall be placed in an account that pays the prevailing rate of interest.
- 3806.4 The sum deposited shall be placed in escrow and outside of the control of the party depositor.
- 3806.5 The escrow agent shall be unable to release the sum deposited in any way other than as ordered by the Commission.

- 3806.6 The party establishing the escrow account shall file a copy of the escrow agreement with the Commission and the opposing party.
- 3806.7 The escrow account shall be established within the time period specified by the Commission.
- 3806.8 Any party ordered to or required under this section to establish an escrow account may in lieu thereof purchase a supersedeas bond that complies with the provisions of this section.

3807 REVIEW OF APPEALS

- 3807.1 The Commission shall reverse final decisions of the Rent Administrator which the Commission finds to be based upon arbitrary action, capricious action, or an abuse of discretion, or which contain conclusions of law not in accordance with the provisions of the Act, or findings of fact unsupported by substantial evidence on the record of the proceedings before the Rent Administrator.
- 3807.2 Interlocutory appeals shall be reviewed pursuant to the provisions found at § 4011, and the Commission shall assign interlocutory appeals priority and may schedule interlocutory appeals for hearing.
- 3807.3 The Commission shall rule on the interlocutory appeal as follows:
- (a) On the merits of the appeal based upon § 4011.3; or
 - (b) If the Commission determines that the motion was incorrectly certified, by dismissing the interlocutory appeal without prejudice to the issue being determined in the final decision of the Rent Administrator.
- 3807.4 Review by the Commission shall be limited to the issues raised in the notice of appeal; Provided, that the Commission may correct plain error.
- 3807.5 The Commission shall not receive new evidence on appeal.

3808 COMMISSION-INITIATED REVIEWS

- 3808.1 Not later than twenty (20) days after the deadline for the parties to file an appeal, the Commission may initiate a review of any decision of the Rent Administrator.
- 3808.2 The Commission shall serve the parties who appeared before the hearing examiner with its reasons for initiating a review and shall inform them of their right and opportunity to present arguments on the issues identified by the Commission.
- 3808.3 All due process rights afforded parties in a review commenced by a notice of appeal shall also be provided when the review is initiated by the Commission.

3808.4 In appeals initiated pursuant to this section, the provisions of §§ 3802.10, 3802.11 and 3805.5 shall not apply.

3809 PARTIES

3809.1 The Commission shall continue the caption of the case as determined by the Rent Administrator in accordance with § 3905, but shall designate the appellant and the appellee.

3809.2 In the event of the death, dissolution, reorganization, or change of ownership or interest of a party, the Commission may, upon its own motion, upon request of the Rent Administrator or upon the motion of a party, substitute or add a person, partnership, or corporation.

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

3809.4 No substitution or addition of parties may occur unless all necessary parties are given an opportunity to file written arguments in support of or opposition to a motion for substitution of parties.

3810 INTERVENORS

3810.1 Any person not a party to an appeal, but having a substantial interest in a case pending before the Commission, may file in writing a motion for leave to intervene.

3810.2 Motions shall describe in detail the position and interest of the moving party and the grounds of the proposed intervention.

3810.3 Any party may file an opposition to the motion.

3810.4 The Commission may grant or deny the motion, or attach conditions to the participation of the moving party if granted.

3811 CONSOLIDATION OF APPEALS

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

3811.2 Appeals may be consolidated by the Commission upon its own motion, or upon a motion of a party.

3812 APPEARANCES AND REPRESENTATION

3812.1 In any proceeding, representation may be as follows:

- (a) An individual, receiver, or trustee may appear in his or her own behalf;
- (b) A member of a partnership may represent the partnership;
- (c) An officer of a corporation may represent the corporation;
- (d) A member selected by the members of an association or an employee of the association, a group of tenants or non-profit corporation may represent the association, group or non-profit corporation;
- (e) A managing agent or property agent, licensed by the District of Columbia and employed by a housing provider for the day-to-day management and operation of a housing accommodation, may represent an owner if only the owner is named as a party; and
- (f) An owner may represent the managing agent or property manager if only the managing agent is named as a party.

3812.2 Nothing in § 3812.1 prohibits the provision of technical assistance by a non-profit community service agency.

3812.3 Any person appearing before or transacting business with the Commission in a representative capacity may be required to establish authority to act in that capacity.

3812.4 A person may be represented in any proceeding before the Commission by one (1) of the following:

- (a) An attorney admitted to the practice of law in the District of Columbia, pursuant to the Rules of the District of Columbia Court of Appeals;
- (b) An attorney admitted to practice before the highest court of any state upon the granting by the Commission of a motion for special appearance;
- (c) Any law student practicing under the supervision of an attorney admitted to practice in the District of Columbia as part of a program approved by an accredited law school for credit; Provided, that the law student's representation before the Commission is undertaken pursuant to the student's participation in the clinical program; Provided Further, that the law student's supervising attorney is presented at any hearing before the Commission; or
- (d) A family member of close personal friend of a party, where the party is incapable of presenting his or her case because of a language barrier, physi-

cal infirmity, or mental incapacity; Provided, that the family member or friend receives no compensation for representing the party before the Commission.

3812.5 The Commission may disqualify or deny, temporarily or permanently, the privilege of appearing or practicing before it or the Rent Administrator in any way, to any individual who is found by the Commission, after hearing, either to be lacking in the requisite qualifications to represent others or to have engaged in unethical, improper or unprofessional conduct; Provided, that any individual who shall willfully mislead the Commission or its staff by a false statement of fact or law shall be disqualified permanently.

3812.6 Any individual who wishes to appear in a representative capacity before the Commission shall file a written notice of appearance stating the individual's name, local address, telephone number, District of Columbia Bar registration number, if applicable, and for whom the appearance is made.

3813 WITHDRAWAL OF APPEARANCE

3813.1 If an attorney or other person representing a party wishes to withdraw from a case pending before the Commission, a written motion for application to withdraw shall be filed.

3813.2 The motion shall state whether the party consents to or opposes the motion and whether the party will be unrepresented or will have substitute representation. A copy of the motion shall be served on the party and the party advised that he or she has the right to oppose the motion.

3813.3 The motion shall state the specific reasons for withdrawal and shall state whether the absence of representation will prejudice the rights of the party.

3813.4 Motions for application to withdraw shall be promptly decided.

3814 MOTIONS

3814.1 An application for an order or other relief shall be made by filing a written motion; Provided, that motions may be made orally at a hearing.

3814.2 Written motions may be filed at any time unless the time for filing is specifically prescribed by the provisions of the Act or this subtitle.

3814.3 Any party may file a response in opposition to a motion within five (5) days after service of the motion.

3814.4 The Commission may schedule any motion for an oral hearing, or may decide any motion without a hearing.

3814.5 Motions for expedited hearings or other forms of expedited relief shall be acted upon promptly.

3814.6 The Commission may create a motions calendar to expedite resolution of motions, and may assign a Commissioner to dispose of motions.

3815 CONTINUANCES, LATE FILINGS, AND AMENDMENT OF PLEADINGS

3815.1 Any party may move to request a continuance of any scheduled hearing or for extension of time to file a pleading, other than a notice of appeal, or leave to amend a pleading if the motion is served on opposing parties and the Commission at least five (5) days before the hearing or the due date; however, in the event of extraordinary circumstances, the time limit may be shortened by the Commission.

3815.2 Motions shall set forth good cause for the relief requested.

3815.3 Conflicting engagements of counsel, absence of counsel, or the employment of new counsel shall not be regarded as good cause for continuance unless set forth promptly after notice of the hearing has been given.

3816 COMPUTATION OF TIME

3816.1 In computing any period of time prescribed or allowed under this chapter, the day of the act, event, or default from which the designated time period begins to run shall not be included.

3816.2 The last day of the period so computed shall be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or a legal holiday.

3816.3 When the time period prescribed or allowed is ten (10) days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

3816.4 Legal holidays shall be those provided in D.C. Code § 1-613.2 (1985 Supp.).

3816.5 If a party is required to serve papers within a prescribed period and does so by mail, three (3) days shall be added to the prescribed period to permit reasonable time for mail delivery.

3816.6 The Commission, for good cause shown, may enlarge the time prescribed, either on motion by a party or on its own initiative; Provided, that the Commission does not enlarge the time for filing a notice of appeal.

3817 SUBPOENAS

3817.1 Any party to an appeal may file a motion with the Commission requesting the issuance of a subpoena requiring the production of documents or the attendance and testimony of witnesses, or a subpoena may be issued by the Commission on its own initiative.

3817.2 Request for subpoenas shall meet the following requirements:

- (a) Be submitted in writing;
- (b) Shall specify with particularity the books, papers, or testimony desired; and
- (c) Shall be served on the Commission and opposing parties at least ten (10) days before a hearing is scheduled.

3817.3 The Commission shall rule promptly on request for subpoenas.

3817.4 A subpoena may be served in the same manner and by any person authorized by the civil rules of the Superior Court of the District of Columbia; Provided, that no witness fees are required.

3818 EX PARTE COMMUNICATIONS

3818.1 The following oral or written communications which are relevant to the merits of a proceeding and to which reasonable prior notice to all parties has not been given shall be considered ex parte:

- (a) Communications between any party or individual representing a party and a Commissioner or any member of the Commission staff; and
- (b) Communications described in § 4002.

3818.2 The provisions of § 3818.1 do not apply to any of the following oral or written communications:

- (a) Those specifically authorized by law to be made on a ex parte basis;
- (b) Those related to a matter of procedure; or
- (c) Those made in the course of another proceeding of the Commission to which the communication primarily relates, and which is on the public record.

3818.3 The prohibition against ex parte communications shall run during the entire time a case is on appeal before the Commission.

3818.4 Any communication made in violation of this section which comes to the attention of the Commission shall be made part of the record and an opportunity for rebuttal by other parties shall be offered by mailing to each party a copy of any such communication or memoranda regarding the communication.

3818.5 Any Commissioner, or member of the Commission staff who receives an ex parte communication prohibited by this section shall, within forty-eight (48) hours after first having reason to believe that the communication is prohibited, prepare and deliver to the Executive Assistant a written statement setting forth the substance of the communication if it is in oral form, or deliver to the Executive Assistant the actual communication if it is in written form.

3818.6 If the Commission determines that a communication was knowingly made (or caused to be made) by a party acting in violation of this section, the Commission may, to the extent consistent with the interest of justice and the policy of applicable law, require the party to show cause why his or her claim or interest in the proceeding should not be dismissed, denied, or otherwise adversely affected.

3819 HEARINGS

3819.1 In hearing appeals, the Commission shall sit as a body with at least two (2) Commission members present, and all hearings shall be open to the public.

3820 TAPE RECORDINGS

3820.1 The entire proceedings of hearings on motions and appeals shall be recorded on tape, which shall remain in the custody of the Commission at all times.

3820.2 At the request of a party to an appeal, the Commission shall make a duplicate tape which the party may hear without charge, or which the party may purchase at cost.

3820.3 If a party to an appeal desires a transcript of the tape, the cost of the transcript shall be borne by the party.

3820.4 The party requesting a transcript shall designate a qualified stenographer to transcribe the tape and the Commission shall deliver the duplicate tape directly to the qualified stenographer.

3820.5 The Commission shall certify duplicate tapes as being exact recordings of the original tape for the purposes of §§ 3820.2 and 3820.4.

3820.6 A transcript based upon a certified duplicate tape, may be used in proceedings before the Commission if the qualified stenographer who produced the transcript certifies it as being complete, accurate, and based upon the certified duplicate tape.

3820.7 Any party to an appeal may seek corrections to a transcript by motion to the Commission filed within ten (10) days of receipt of the transcript.

3821 DECISIONS

3821.1 All decisions of the Commission shall be in writing and shall be signed by at least two (2) members of the Commission.

3821.2 Each Commissioner shall sign each decision in which he or she participates, including concurring or dissenting opinions.

3821.3 The Commission shall retain the original copy of each signed decision which shall include a page containing the names of persons mailed the decision and a certificate of mailing with the date of mailing signed by the member of the Commission staff who mailed the decision.

3821.4 A copy of each signed decision shall be mailed to each party pursuant to § 3803.2 and shall be made promptly available to the public.

3821.5 Any person or class of persons aggrieved by a final decision of the Rental Housing Commission may obtain judicial review of the final decision by filing a petition for review in the District of Columbia Court of Appeals.

3821.6 Decisions of the Commission shall become final when issued; Provided, that if a motion for reconsideration is filed, the decision shall become final when the motion is disposed of pursuant to § 3823.

3822 REMANDS

3822.1 The Commission shall endeavor to effect a final disposition of all issues in controversy.

3822.2 Any case remanded by the Commission to the Rent Administrator shall receive expedited and priority treatment.

3822.3 Remanded cases shall be returned to the hearing examiner who originally heard the matter unless the hearing examiner is no longer available or the Commission for good cause orders otherwise.

3823 RECONSIDERATION OR MODIFICATION

3823.1 Any party adversely affected by a decision of the Commission issued to dispose of the appeal may file a motion for reconsideration or modification with the Commission within ten (10) days of receipt of the decision; Provided, that an order issued on reconsideration is not subject to reconsideration.

- 3823.2 The motion for reconsideration or modification shall set forth the specific grounds on which the applicant considers the decision and order to be erroneous or unlawful.
- 3823.3 Within fifteen (15) days of filing of the motion, the Commission shall grant the motion, deny the motion or enlarge the time for later disposition of the motion.
- 3823.4 Notwithstanding § 3814.6, motions for reconsideration or modification filed pursuant to this section shall be decided by at least two (2) members of the Commission.
- 3823.5 Failure of the Commission to act pursuant to § 3823.3 shall constitute a denial of the motion for reconsideration or modification.
- 3823.6 The filing of a motion for reconsideration or modification shall act as a stay upon the effectiveness of the Commission's order until such time as the motion is ruled upon by the Commission, or denied pursuant to § 3823.5.

3824 WITHDRAWAL OF APPEALS

- 3824.1 An appellant may file a motion to withdraw an appeal pending before the Commission.
- 3824.2 The Commission shall review all motions to withdraw to ensure that the interests of all parties are protected.

3825 ATTORNEY'S FEES-COMMISSION

- 3825.1 The Rent Administrator or the Rental Housing Commission may award attorney's fees incurred in the administrative adjudication of a petition in accordance with § 902 of the Act.
- 3825.2 A presumption of entitlement to an award of attorney's fees is created by a prevailing tenant, who is represented by an attorney.
- 3825.3 A prevailing housing provider represented by an attorney may be awarded attorney's fees where the Rent Administrator or the Commission finds that the litigation of the tenant was frivolous, unreasonable, or without foundation.
- 3825.4 The Commission or the Rent Administrator may deny an award of attorney's fees to either a housing provider or a tenant, if it is determined the equities indicate.
- 3825.5 Attorney's fees are awarded only for the services of attorneys, and their law clerks, paralegals, or law students, who worked on the petition under the supervision of an attorney, who entered an appearance in the case, except that no award is allowable for the services of a pro se attorney who is a party to the proceedings.

- 3825.6 Attorney's fees shall be paid only for services performed after the filing of the petition and after the party notified the Rent Administrator or the Commission that the party is represented by an attorney, except that fees are allowable for a reasonable period of time prior to the notification of representation for any services performed in reaching a determination to represent the party. Written filings to the Commission signed by the attorney shall be deemed to constitute notice of representation.
- 3825.7 An award of attorney's fees by the Rent Administrator or the Commission shall be based on an affidavit executed by the attorney of record itemizing the attorney's time for legal services and providing the applicable information listed in section 3825.8. The affidavit shall be made part of the agency's official file.
- 3825.8 The award of attorney's fees shall be calculated in accordance with the existing case law using the following standards:
- (a) The starting point shall be the lodestar, which is the number of hours reasonably expended on a task multiplied by a reasonable hourly rate.
 - (b) The lodestar amount may be reduced or increased after considering the following factors:
 - (1) the time and labor required;
 - (2) the novelty, complexity, and difficulty of the legal issues or questions;
 - (3) the skill requisite to perform the legal service properly;
 - (4) the preclusion of other employment by the attorney, due to acceptance of the case;
 - (5) the customary fee or prevailing rate in the community for attorneys with similar experience;
 - (6) whether the fee is fixed or contingent;
 - (7) time limitations imposed by the client or the circumstances;
 - (8) the amount involved and the results obtained;
 - (9) the experience, reputation, and ability of the attorney;
 - (10) the undesirability of the case;

- (11) the nature and length of the professional relationship with the client;
- (12) the award in similar cases; and
- (13) the results obtained, when the moving party did not prevail on all the issues.

3825.9 An attorney is any person admitted to practice law before any court in the District of Columbia or any state of the United States or any territory of the United States.

3825.10 No attorney's fees award shall be granted for evictions pursuant to § 501 of the Act.

3825.11 An award of attorney's fees accrues interest from the date of the award and the interest is calculated in accordance with *14 DCMR 3826*.

3825.12 Motions for an award of attorney's fees must be submitted within ten (10) days after the final decision or order from the Rent Administrator or the Commission.

3826 INTEREST

3826.1 The Rent Administrator or the Rental Housing Commission may impose simple interest on rent refunds, or treble that amount under § 901(a) or § 901(f) of the Act.

3826.2 Interest is calculated from the date of the violation (or when service was interrupted) to the date of the issuance of the decision.

3826.3 The interest rate imposed on rent refunds or treble that amount, if any, shall be the judgment interest rate used by the Superior Court of the District of Columbia pursuant to D.C. Code S 28-3302(c), on the date of the decision.

3826.4 Post judgment interest shall continue to accrue until full payment, or an intervening decision, order, or judgment modifies or amends the judgment or accrual of interest.

3827 FINES AND INFRACTIONS

3827.1 In accordance with the provisions of section 901 of the Act, the Commission shall hear and decide appeals involving fines for infractions of the Act or any regulation issued pursuant to the Act. The Commission may impose fines not exceeding \$ 5,000.00 for each violation.

3828 COMMISSION PROCEDURES GENERALLY

3828.1 When these rules are silent on a procedural issue before the Commission, that issue shall be decided by using as guidance the current rules of civil procedure published and followed by the Superior Court of the District of Columbia and the rules of the District of Columbia Court of Appeals.

3899 DEFINITIONS

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

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

Act - the Rental Housing Act of 1985, D.C. Law 6-10, effective July 17, 1985.

Annual fair market rent amount - the annualized sum of the rents collected for all rental units in the housing accommodation during the base calculation year, plus an amount equal to the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for all items, in the Washington, D.C. Standard Metropolitan Statistical Area, during each calendar year; provided, however, that if no rents were collected in the base calculation year because the housing accommodation was then under construction, the annual fair market rental amount shall be a sum equal to the rent which would have been collected during the base calculation year had the housing accommodation been 100% occupied during the entire base calculation year, the sum to be determined by appraisal, as increased by the Consumer Price Index increase under this paragraph.

Apartment improvement program - the program which is administered with grant funds from Title I of the Housing and Community Development Act of 1974, approved August 22, 1974 (*88 Stat. 633; 42 U.S.C. 5301*), by the District of Columbia Department of Housing and Community Development, developed by the National Neighborhood Reinvestment Corporation under the Neighborhood Reinvestment Corporation Act, approved October 31, 1978 (*92 Stat. 2115; 42 U.S.C. 8101*), and operated under the supervision of the public-private Partnership Committee, which program has been established for the purpose of finding solutions to the economic and physical distress of moderate income rental apartment buildings by joining the tenants, housing provider, note holder, and District government in a collective effort.

Base calculation year - the calendar year immediately preceding the first calendar year in which a given housing accommodation is made subject to §§ 205(f) through 219 of the Act or any future District law limiting the amount of rent which can lawfully be demanded or received from a tenant.

Base rent - that rent legally charged or chargeable on April 30, 1985, for the rental unit which shall be the sum of the rent charged on September 1, 1983, and all rent increases authorized for that rent unit by prior rent control laws or any administrative decision issued under those laws, and any rent increases authorized by a court of competent jurisdiction.

Building improvement plan - the agreement executed between the parties of interest, including the tenants, housing provider, and the District government, at a property being treated under the apartment improvement program, which agreement sets forth the remedies to the property's distress, including but not limited to, the following:

- (a) A schedule of repairs and capital improvements which, at a minimum, will bring the property into substantial compliance with the housing regulations;
- (b) A schedule of services and facilities; and
- (c) A schedule of rent ceilings and rent increases; and which agreement is monitored by the District government until it expires upon completion of all physical improvements and other schedule activities included therein.

Capital improvement - an improvement or renovation other than ordinary repair, replacement, or maintenance if the improvement or renovation is deemed depreciable under the Internal Revenue Code (26 U.S.C.).

Cooperative housing association - an association incorporated for the purpose of owning and operating residential real property in the District, the shareholders or members of which, by reason of their ownership of stock or membership certificate, a proprietary lease, or evidence of membership, are entitled to occupy a dwelling unit under the terms of a proprietary lease or occupancy agreement.

Council - the Council of the District of Columbia.

Division - the Rental Accommodations and Conversion Division.

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

Elderly tenant - a person who is sixty (60) years of age or older.

Equity - the portion of the assessed value of a housing accommodation that exceeds the total value of all encumbrances in the housing accommodation.

Housing accommodation - any structure or building in the District containing one (1) or more rental units and the land appurtenant thereto. The term "housing accommodation" does not include any hotel or inn with a valid certificate of occupancy or any structure, including any room in the structure, used primarily for transient occupancy and in which at least sixty percent (60%) of the rooms devoted to living quarters for tenants or guests were used for transient occupancy as of May 20, 1980. For the purposes of chapters 38 through 44 of this title, a rental unit shall be deemed to be used for transient occupancy only if the housing provider of the rental unit is subject to and pays the sales tax imposed by § 114(a)(3) of the District of Columbia Sales Tax Act, approved May 27, 1949 (*63 Stat. 112; D.C. Code § 47-2001(n)(1)(C)* (1981)).

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

Housing regulations - the most recent edition of the Housing Regulations of the District of Columbia, as established by the Commissioner's Order No. 55-1503, effective August 11, 1955.

Initial leasing period - that period for which the first tenant of a rental unit rents the rental unit. For units described in § 209 of the Act, chapter 42 of this title, the first tenant is the tenant who rents the rental unit immediately after the date it is first offered for rent as a rental unit which is not otherwise exempt from the Act.

Interest payments - the amount of interest paid during a reporting period on a mortgage or deed of trust on a housing accommodation.

Management fee - the amount paid to a managing agent and any pro rata salaries of off-site administrative personnel paid by the housing provider, if the duties of the personnel are connected with the operation of the housing accommodation.

Maximum possible rental income - the sum of the rents for all rental units in the housing accommodation, whether occupied or not, computed over a base period of the twelve (12) consecutive months within the fifteen (15) months preceding the date of any filing required or permitted under the Act.

Mayor - the Office of the Mayor of the District of Columbia.

Operating expenses - the expenses required for the operation of a housing accommodation for the twelve (12) consecutive months within the fifteen (15) months preceding the date of its use in any computation required by any provision of the Act and this title, including but not limited to, expenses for salaries of on-site personnel, supplies, painting, maintenance and repairs, utilities, professional fees, on-site offices and insurance.

Other income which is derived from the housing accommodation - any income, other than rents, which a housing provider earns because of his or her interest in a housing accommodation, including but not limited to, fees, commissions, income from vending machines, income from laundry facilities, and income from parking and recreational facilities.

Person - an individual, corporation, partnership, association, joint venture, business entity, or an organized group of individuals, and their respective successors and assignees.

Property taxes - the amount levied by the District government for real property tax on a housing accommodation during a tax year.

Related facility - any facility, furnishing, or equipment made available to a tenant by a housing provider, the use of which is authorized by the payment of the rent charged for a rental unit, including any use of a kitchen, bath, laundry facility, parking facility, or the common use of any common room, yard, or other common area.

Related services - services provided by a housing provider, required by law or by the terms of a rental agreement, to a tenant in connection with the use and occupancy of a rental unit, including repairs, decorating and maintenance, the provision of light, heat, hot and cold water, air conditioning, telephone answering or elevator services, janitorial services, or the removal of trash and refuse.

Rent - the entire amount of money, money's worth, benefit, bonus, or gratuity demanded, received, or charged by a housing provider as a condition of occupancy or use of a rental unit, its related services, and its related facilities.

Rent ceiling - that amount defined in or computed under § 206 of the Act and chapter 42 of this title.

Rental Accommodations Act of 1975 - the Rental Accommodations Act of 1975, D.C. Law 1-33, effective November 1, 1975.

Rental Housing Act of 1977 - the Rental Housing Act of 1977, D.C. Law 2-54, effective March 16, 1978.

Rental Housing Act of 1980 - the Rental Housing Act of 1980, D.C. Law 3-131, effective March 4, 1981.

Rental unit - any part of a housing accommodation as defined in § 4502.13 which is rented or offered for rent for residential occupancy and includes an apartment, efficiency apartment, room, single-family house and the land appurtenant thereto, suite of rooms, or duplex.

Substantial rehabilitation - any improvement to or renovation of a housing accommodation for which:

- (a) The building permit was granted after January 31, 1973; and
- (b) The total expenditure for the improvement or renovation equals or exceeds fifty percent (50%) of the assessed value of the housing accommodation before the rehabilitation.

Substantial violation - the presence of any housing condition, the existence of which violates the housing regulations, or any other statute or regulation relative to the condition of residential premises and may endanger or materially impair the health and safety of any tenant or person occupying the property.

Tenant - a tenant, subtenant, lessee, sublessee, or other person entitled to the possession, occupancy, or the benefits of any rental unit owned by another person.

Uncollected rent - the amount of rent and other charges due for at least thirty (30) days but not received from tenants at the time any statement, form, or petition is filed under the Act, and chapters 38 through 44 of this title.

Vacancy loss - the amount of rent not collectable due to vacant units in a housing accommodation. No amount shall be included as a vacancy loss for units occupied by a housing provider or his or her employees or otherwise not offered for rent.

**CHAPTER 39: RENTAL ACCOMMODATIONS AND CONVERSION DIVISION
(RACD)**

3900 THE RENT ADMINISTRATOR

- 3900.1 The Rent Administrator shall, in addition to other duties, carry out the administration of the rent stabilization program, including the receipt of complaints applications, and petitions arising under Titles II, IV, V, VI and IX of the Act, and V of the Rental Housing Act of 1980 which may be disposed of through administrative proceedings.
- 3900.2 The Rent Administrator shall establish internal operating procedures for the handling of RACD business.
- 3900.3 The Rent Administrator shall issue written delegations of authority pursuant to § 204(d) of the Act to hearing examiners to hear administrative petitions and issue decisions and final orders on those petitions; Provided, that the Rent Administrator shall delegate authority to issue final decisions and orders only with the formal occurrence of the Commission.
- 3900.4 The RACD shall be open daily from 8:30 a.m. to 3:30 p.m., except Saturdays, Sundays, and legal holidays.
- 3900.5 The Rent Administrator shall operate a "Tenant Hot Line" telephone service to provide assistance primarily to low and moderate income tenants in accordance with the provisions of § 705 of the Act.

3901 FILING PETITIONS AND OTHER DOCUMENTS

- 3901.1 All petitions and documents to be filed with the Rent Administrator shall be received in the Rental Accommodations and Conversion Division (RACD) of the Department of Consumer and Regulatory Affairs, 614 H Street, N.W., Room 402, Washington, D.C. 20001, unless otherwise directed.
- 3901.2 No fee shall be charged for filing any document with the RACD.
- 3901.3 All petitions before the Rent Administrator shall be filed on forms provided by the Rent Administrator and accompanied by any supporting documents as required.
- 3901.4 Each document filed shall be promptly date-stamped and entered into the RACD daily log.
- 3901.5 Each petition filed shall be promptly date-stamped and entered into the appropriate RACD petition log.
- 3901.6 The RACD daily log and petition logs shall be available for public inspection.

- 3901.7 The receipt of a document for filing by RACD shall not constitute a waiver of any failure to comply with the requirements of this subtitle.
- 3901.8 Any pleading or other filing that does not comply with the requirements of this subtitle may be rejected by RACD.
- 3901.9 Unless otherwise required, each filing shall consist of an original and four (4) identical copies of each document submitted.
- 3901.10 No document shall be considered properly filed after the date on which the document is due for filing.
- 3901.11 All pleadings and other filings shall be deemed filed when received and stamped by RACD during business hours on or before the date due.

3902 PROCEDURES UPON FILING PETITION.

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

DOCUMENT	PREFIX
(a) Tenant Petitions	TP
(b) Hardship Petitions	HP
(c) Capital Improvement Petitions	CI
(d) Petitions for Substantial Rehabilitation	SR
(e) Petitions for Changes in Related Services and Facilities	SF
(f) Case numbers for Voluntary Agreements shall be indicated with the prefix VA	
(g) Case numbers for Show Cause hearings shall be indicated with the prefix SC	
(h) Case numbers for Compliance hearings shall be indicated with the word "COMPLIANCE"	

3902.2 The Rent Administrator shall enter the receipt and acceptance of each petition in a docket, which shall list the petition number, the address of the affected housing accommodation or rental unit, and the date on which the petition is scheduled to be heard before a hearing examiner.

- 3902.3 Upon receipt of a petition, the Rent Administrator shall, by first class mail, notify the adverse parties named in the petition of their right to a hearing.
- 3902.4 In the case of tenant petitions, a copy of the petition shall be sent to the housing provider of the housing accommodation.
- 3902.5 In the case of petitions filed by a housing provider, the housing provider shall provide for each tenant in the housing accommodation one (1) copy of the petition, and a postage paid envelope addressed to each tenant by name which contains the return address of the RACD. The copies shall be mailed to the tenants by the Rent Administrator.

3903 RIGHT TO A HEARING AND DISPOSITION OF PETITIONS WITHOUT HEARINGS.

- 3903.1 The parties to petitions before the Rent Administrator have a right to a hearing in accordance with the provisions of the Act and chapter 40.
- 3903.2 The Rent Administrator on his or her motion may dismiss any petition which does not state a claim for which relief can be granted under the Act.
- 3903.3 The Rent Administrator shall dismiss a petition for adjustment of rent if a ruling on the same issue has been made for the same housing accommodation or rental unit within six (6) months prior to the filing of the petition, unless that previous ruling dismissed a former petition without prejudice to refiling.
- 3903.4 The Rent Administrator may refuse to accept for filing, or may dismiss, a petition in the following circumstances:
- (a) If it is not properly filed;
 - (b) If it is not on the prescribed form pursuant to § 3901.3;
 - (c) If it is not prepared in accordance with the instructions of the Rent Administrator;
 - (d) If it is not accompanied by documents where required; or
 - (e) If it is not signed by the party, or authorized representative of the party, filing the petition.

3904 PARTIES.

- 3904.1 Individual tenants involved in any proceeding shall be individually identified.
- 3904.2 Any tenant association may file and shall be granted party status to prosecute or defend a petition on behalf of anyone or more of its members who have provided

the association with written authorization to represent them in the action, or to seek on behalf of all members any injunctive relief available under the Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code § 42-3501.01 et seq.). No further inquiry into the membership of the association shall be permitted.

3904.3 Any tenant association that is a party to the action pursuant to § 3904.2 shall be listed in the caption.

3905 CAPTIONS.

3905.1 In order to achieve uniformity of pleadings before the Rent Administrator in all contested proceedings arising under this Act, and to ensure that the rights and liabilities of proper parties in interest are secured, all cases arising from complaints and petitions shall be properly captioned as provided in this section.

3905.2 Captions shall contain the name of the housing provider as listed on the registration statement; Provided, however, that if the management agent represents the housing provider in any proceeding, the management agent shall also be listed in the caption and identified as the agent.

3906 SUBSTITUTION OR ADDITION OF PARTIES.

3906.1 Upon the death of a party, or the dissolution, reorganization, or change of ownership or interest of a party, or a change in the registration statement resulting from an amendment filed under § 4103, the hearing examiner may, upon the motion of a party or upon the hearing examiner's own motion, substitute or add a person, partnership, or corporation.

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

3906.3 No substitution or addition of parties may occur unless all necessary parties are provided an opportunity to file written arguments in support of or opposition to a motion for substitution or addition of parties.

3906.4 A hearing on the motion for addition or substitution of parties may be scheduled at the discretion of the hearing examiner.

3907 INTERVENORS.

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

- 3907.2 A request to intervene shall be by motion which shall state the reasons why intervention should be permitted.
- 3907.3 Intervenor shall be considered full parties and shall have the same rights and duties as a party to a petition, with the following exceptions:
- (a) Intervenor shall not have an independent right to a hearing; and
 - (b) Intervenor may participate only with respect to issues affecting them, as determined by the hearing examiner.

3908 EXPANDING THE SCOPE OF A PROCEEDING.

- 3908.1 If the hearing examiner determines that the issues raised in a tenant petition affect other tenants or all tenants in the housing accommodation, the hearing examiner may expand the scope of the proceeding to include all affected tenants; Provided, that notice shall be given to the additional tenants that they have the right to participate in the proceeding.
- 3908.2 The notice to other tenants shall state the issues to be decided in the proceeding and that any decision shall be binding upon them.
- 3908.3 The hearing examiner shall also provide notice to the housing provider of the determination to expand the scope of the proceeding.
- 3908.4 Tenants and the housing provider shall have a reasonable opportunity to present any arguments in support of or opposition to the hearing examiner's determination.

3909 CONSOLIDATION OF PETITIONS.

- 3909.1 The Rent Administrator may consolidate two (2) or more petitions where they contain identical or similar issues or where they involve the same rental unit or housing accommodation.
- 3909.2 The Rent Administrator may consolidate petitions on the motion of a party to a petition, if consolidation would expedite the processing of the petition and would not adversely affect the interests of the parties.

3910 DELEGATION OF AUTHORITY OF HEARING EXAMINERS.

- 3910.1 Hearing examiners shall conduct fair and impartial hearings and take necessary actions to avoid delay in the disposition of petitions and other matters.
- 3910.2 Hearing examiners shall have all powers necessary to carry out the purposes of § 3910.1 in accordance with § 3900.3, unless otherwise limited by law, including but not limited to, authority to do the following:

- (a) Administer oaths and affirmations;
- (b) Issue subpoenas in accordance with § 204(h) of the Act and this subtitle;
- (c) Convene hearings as appropriate and regulate the course of the hearing, maintain decorum, and exclude from the hearing any disruptive person(s);
- (d) Exclude witnesses, other than parties, during the examination of other witnesses;
- (e) Rule on the use of discovery procedures as appropriate;
- (f) Rule on offers of proof and receive relevant evidence;
- (g) Rule on all motions;
- (h) Rule on all contested issues;
- (i) Request the filing of memoranda of law and the presentation of oral arguments with respect to any contested issue or any question of law;
- (j) Order the production of evidence and the appearance of witnesses whose testimony would be relevant and material;
- (k) Impose penalties, as provided by law and this subtitle; and
- (l) Hold prehearing conferences for the settlement, and simplification of contested issues.

3911 SERVICE OF NOTICE.

- 3911.1 All documents required to be served upon any person under this subtitle shall be served upon that person, or shall be served upon the representative designated by that person or by law to receive service of documents.
- 3911.2 When a party has a representative of record as provided in § 4005, service shall be made upon the representative.
- 3911.3 Service upon a person shall be completed in accordance with § 904 of the Act.
- 3911.4 Actual receipt of service shall bar any claim of defective service, except for a claim with respect to the timeliness of service.
- 3911.5 Service by mail shall be complete upon mailing.

3911.6 Pleadings, and other document shall be served on the other parties prior to or at the same time as filed with the hearing examiner.

3911.7 Proof of service of pleadings and other documents to parties shall meet the following requirements:

(a) Be submitted in writing; and

(b) Shall show the date, person served, address at which service was made, and the manner of service.

3912 COMPUTATION OF TIME.

3912.1 In computing any period of time prescribed or allowed by the rules, the day of the act, event, or default from which the designated time period begins to run shall not be included.

3912.2 The last day of the period so computed shall be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the next day which is not a Saturday, Sunday, or a legal holiday.

3912.3 When the time period prescribed or allowed in ten (10) days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

3912.4 Legal holidays shall be those provided in D.C. Code § 1-613.2 (1985 Supp.).

3912.5 If a party is required to serve papers within a prescribed period and does so by mail, three (3) days shall be added to the prescribed period to permit reasonable time for mail delivery.

3912.6 The RACD, for good cause shown, may enlarge the time prescribed, either on motion by a party or on its own initiative.

3913 CONCILIATION OF DISPUTES AND THE CONCILIATION SERVICE.

3913.1 Either a housing provider or a tenant may initiate a request for conciliation of a dispute arising under the act or this subtitle.

3913.2 A request for conciliation of a dispute shall be filed on a form provided by the Rent Administrator.

3913.3 A request for conciliation of a dispute shall be filed with the RACD Conciliation Service established by § 503 of the Act. The Conciliation Service shall do the following:

(a) Utilize a knowledge of the Act, this subtitle, and, if applicable, an Apartment Improvement Program building improvement plan, and other specif-

ic information about the circumstances of the dispute to assist the parties in arriving at a mutually acceptable explanation of the dispute and to assist the parties in developing a mutually acceptable settlement or resolution of the dispute;

- (b) Advise both the housing provider and the tenant of their rights and obligations under the Act, this subtitle, and other applicable D.C. laws;
- (c) Advise both the housing provider and the tenant of circumstances surrounding the dispute which constitute violations of the Act, this subtitle, and other D.C. laws; and
- (d) Refer disputes relating to a building improvement plan that are not resolved by conciliation to a partnership committee of the Apartment Improvement Program.

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

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

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

3913.7 The proceedings of the Conciliation Service shall be informal, voluntary, and non-adversarial. No formal evidence shall be offered or accepted.

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

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

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

3913.11 Immediately prior to the hearing in any tenant petition, the Rent Administrator or the Rent Administrator's designee shall offer to assist the parties in resolving the

dispute through conciliation. If conciliation fails, upon mutual consent of the parties, the housing provider and the tenant may submit any dispute for arbitration.

3914 ARBITRATION.

3914.1 By mutual agreement, both the housing provider and the tenant(s) who are parties to a dispute under this Act, may file with the Rent Administrator, on a form provided by the Rent Administrator, a request for arbitration of any dispute not satisfactorily conciliated under § 503 of the Act and § 3913 of this subtitle.

3914.2 Parties may waive the conciliation process and mutually agree to have the dispute arbitrated pursuant to this section and § 504 of the Act.

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

3914.4 The Rent Administrator shall designate three (3) members of the RACD staff, other than those who heard the dispute under § 503 of the Act to serve as members of the Arbitration Panel.

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

3914.6 The Arbitration Panel shall issue a written recommendation to resolve the dispute within ten (10) days of the arbitration request.

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

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

3915 ADVISORY OPINIONS.

3915.1 The Rent Administrator may issue at the request of any person an advisory opinion on issues of first impression relating to specific proposed actions.

3915.2 Advisory opinions shall not address an issue currently pending before the Rent Administrator or the Commission in a hearing or other adjudicative proceeding.

3915.3 Each inquiry shall meet the following requirements:

- (a) Be submitted in writing;

- (b) Specifically request an advisory opinion;
- (c) Contain a signed statement of proposed action, of all relevant facts and of the author's interpretation of the law or regulations; and
- (d) Accompanied by any relevant documents.

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

3999 DEFINITIONS.

3999.1 The provisions of § 3899 of chapter 38 of this title and the definitions set forth in that section shall be applicable to this chapter.

CHAPTER 40: RACD HEARINGS

4000 HEARINGS.

- 4000.1 Hearings, except arbitration hearings held pursuant to § 3914, shall be open to the public.
- 4000.2 All hearings shall be conducted in accordance with the procedures for contested cases set forth in the D.C. Administrative Procedure Act, D.C. Code § 1-1501 et seq. (1981).
- 4000.3 At each hearing, the hearing examiner shall explain the nature of the proceedings, state the contested issues involved, and administer an oath or affirmation to all persons who will testify.

4001 DISQUALIFICATION OF HEARING EXAMINERS.

- 4001.1 Any party may file a motion with the hearing examiner requesting a hearing examiner to withdraw from a proceeding or hearing on the basis of conflict of interest or other disqualification.
- 4001.2 The hearing examiner shall rule on the motion within three (3) days of the filing of the motion.
- 4001.3 Denials of motions filed pursuant to § 4001.2 may be reviewed by the Rent Administrator upon request of the moving party and rulings by the Rent Administrator shall be issued within three (3) days of the request for review.
- 4001.4 In the event that a hearing examiner is disqualified, he or she shall withdraw from the proceeding or hearing, stating on the record the reasons for withdrawal, and shall immediately notify the Rent Administrator in writing.
- 4001.5 In the event a hearing examiner is disqualified for any reason, the matter shall be heard de novo before a different hearing examiner.

4002 EX PARTE COMMUNICATIONS.

- 4002.1 Oral or written communications regarding a petition or other contested issue pending disposition before the Rent Administrator or staff or RACD, for the benefit of one party only, and without notice to or contestation by the opposing party or any other person adversely interested, shall be considered ex parte communications. Ex parte communications shall include the following:
 - (a) Communications relevant to the factual substance of a case between any interested party and the Rent Administrator, the hearing examiner assigned to the case or other staff of RACD;

- (b) Communications relevant to the qualifications of the hearing examiner before whom the proceeding is being heard, between any interested party and the Rent Administrator, the hearing examiner or other staff of RACD;
- (c) Communications described in § 3818; or
- (d) Communications regarding the evaluation of the merits of a party's claim or case, legal advice or advocacy either before or after the filing of a petition or other contested issue, between an interested party and the Rent Administrator or other staff of RACD.

4002.2 The provisions of § 4002.1 do not apply to any of the following oral or written communications:

- (a) Those specifically authorized by law or this chapter to be made on an ex parte basis;
- (b) Those related to a matter of form, format or procedure including the filling out of forms;
- (c) Those made in the course of another proceeding of RACD to which the communication primarily relates, and which is on the public record; and
- (d) Those between an interested party and a Contact Representative or other staff of RACD assigned the duty of providing information to the public regarding the provisions of the Act, regulations and the internal procedures of RACD and the Commission, and including referrals to agencies and sources of legal assistance and advocacy. Contact representatives are authorized to do the following:
 - (1) Hear a client's explanation of his or her problem where no petition has been filed;
 - (2) Advise a client that grounds may exist for the filing of a petition and immediately refer the client to a source of legal or technical advocacy; and
 - (3) Advise clients on filling out forms; except that advice on how to state, describe, arrange, document, or argue a claim shall be prohibited.

4002.3 The Rent Administrator, the hearing examiner or other staff of RACD who receives any communication regarding a petition or other contested issue pending disposition, which is made in violation of this section shall cause the communication to be made part of the record and the hearing examiner shall notify all other parties and provide an opportunity for rebuttal.

4002.4 If the Rent Administrator determines that a communication was knowingly made (or caused to be made) by a party acting in violation of this section, the Rent Administrator may, to the extent consistent with the interest of justice and the policy of applicable law, require the party to show cause why his or her claim or interest in the proceeding should not be dismissed, denied, or otherwise adversely affected.

4003 BURDEN OF PROOF.

4003.1 The proponent of a rule or order shall have the burden of establishing each finding of fact essential to the rule or order by a preponderance of evidence.

4003.2 In show cause or compliance hearings, the burden of proof shall rest on the Rent Administrator.

4003.3 For purposes of this section, the following definitions shall apply:

- (a) Substantial evidence - Relevant evidence which a reasonable mind, considering the record as a whole, would accept as adequate to support a conclusion that the matter asserted is true;
- (b) Harmful procedural error - error made by the hearing examiner in the application of the provisions of law or regulations which, in the absence of the correction of the error, might have caused the hearing examiner to reach a conclusion which is different from the conclusion reached; and
- (c) Preponderance of evidence - substantial evidence which is of greater weight or is more convincing than the evidence which is offered in opposition to it.

4004 APPEARANCES AND REPRESENTATION.

4004.1 In any proceeding the following appearances may be made:

- (a) An individual, receiver, or trustee may appear in his or her own behalf;
- (b) A member of a partnership may represent the partnership;
- (c) An officer of a corporation may represent the corporation;
- (d) A member selected by the members of an association or an employee of the association, a group of tenants or non-profit corporation may represent the association, group or non-profit corporation;
- (e) A managing agent or property agent, licensed by the District of Columbia and employed by a housing provider for the day-to-day management and

operation of a housing accommodation, may represent an owner if only the owner is named as a party; or

- (f) An owner may represent the managing agent or property manager if only the managing agent is named as a party.

4004.2 Nothing in § 4004.1 prohibits the provision of technical assistance by a non-profit community service agency.

4004.3 Any person appearing before or transacting business with RACD in a representative capacity may be required to establish authority to act in that capacity.

4004.4 A person may be represented in any proceeding before RACD by one of the following:

- (a) An attorney admitted to the practice of law in the District of Columbia, pursuant to the rules of the District of Columbia Court of Appeals;
- (b) An attorney admitted to practice before the highest court of any state upon the granting by the Rent Administrator of a motion for special appearance;
- (c) Any law student practicing under the supervision of an attorney admitted to practice in the District of Columbia as part of a program approved by an accredited law school for credit; Provided, that the law student's representation before the RACD is undertaken pursuant to the student's participation in the clinical program; Provided further, that the law student's supervising attorney is present at any hearing before the RACD; or
- (d) A family member or close personal friend of a party, where the party is incapable of presenting his or her case because of a language barrier, physical infirmity, or mental incapacity; Provided, that the family member or friend receives no compensation for representing the party before RACD.

4004.5 The Rent Administrator may disqualify or deny, temporarily or permanently, the privilege of appearing or practicing before it or the Rent Administrator in any way, to any individual who is found by the Rent Administrator, after hearing, either to be lacking in the requisite qualifications to represent others or to have engaged in unethical, improper or unprofessional conduct; Provided, that any individual who shall willfully mislead the Commission or its staff by a false statement of fact or law shall be disqualified permanently.

4004.6 If it appears to the hearing examiner at any time during the proceedings that the matter under review is so complicated or that the potential liabilities are so great that in the interest of justice a party ought to be represented by an attorney, the hearing examiner shall urge the party to obtain the services of an attorney.

- 4004.7 If the party agrees to obtain the services of an attorney, the opposing party shall be so advised, and the hearing on the matter shall be continued for a reasonable time in order to allow the party to retain counsel and prepare for a hearing. The continuance shall not exceed thirty (30) days.
- 4004.8 Upon motion of a party and upon good cause shown, the hearing examiner may disqualify a party's representative on the grounds of conflict of interest.
- 4004.9 In the event the selected representative of a party is disqualified, the matter shall be continued for a reasonable time to allow the party to obtain another representative and to allow that representative to prepare to participate in the proceedings. The continuance shall not exceed thirty (30) days.
- 4004.10 Any representative of a party who wishes to withdraw from a matter pending before the RACD shall give written notice to that effect to the hearing examiner and to all parties; Provided, that the hearing examiner shall consent to the withdrawal before it is effective, and shall have the right to impose such conditions upon withdrawal which shall preserve the administrative process.

4005 WITNESSES.

- 4005.1 The testimony of witnesses shall be given under oath or affirmation.
- 4005.2 The testimony of witnesses and the production of documents and records may be compelled by subpoena, which is enforceable by the Superior Court of the District of Columbia.
- 4005.3 All cost of issuance and service of a subpoena, including witness fees, shall be paid by the party requesting the subpoena, unless the Rent Administrator assumes the cost.
- 4005.4 Each District agency, board, commission, or independent personnel authority shall make its employees available to furnish sworn statements, to provide records, and to appear as witnesses at RACD hearings when requested by the Rent Administrator.
- 4005.5 When providing statements or testimony in their official capacity, witnesses employed by the District shall be on official duty status.
- 4005.6 Each party and each person appearing at a hearing to testify shall sign an attendance sheet stating his or her name, address, telephone number, and the purpose for which or the capacity in which he or she is participating.
- 4005.7 Attendance sheets shall be made a part of the record.

4006 TAPE RECORDING OF HEARINGS.

- 4006.1 The entire proceedings of hearings and other matters shall be recorded on tape, which shall remain in the custody of RACD at all times.
- 4006.2 At the request of a party RACD shall make a duplicate tape which the party may hear without charge, or which the party may purchase at cost.
- 4006.3 If a party desires a transcript of the tape, the cost of the transcript shall be borne by the party.
- 4006.4 The party requesting a transcript shall designate a qualified stenographer to transcribe the tape and RACD shall deliver the duplicate tape directly to the qualified stenographer.
- 4006.5 The Rent Administrator shall certify duplicate tapes as being exact recordings of the original tape for the purposes of §§ 4006.2 and 4006.4.
- 4006.6 Upon completion of a transcript based upon a certified duplicate tape, the transcript may be used in proceedings before RACD if the qualified stenographer who produced the transcript certifies it as being complete, accurate, and based upon the certified duplicate tape.
- 4006.7 Any party may seek corrections to a transcript by motion to the hearing examiner filed within ten (10) days of receipt of the transcript.

4007 OFFICIAL RECORD OF A PROCEEDING.

- 4007.1 The record of a proceeding at RACD shall consist of the following:
- (a) The findings of fact and conclusions of law and the decision of the Rent Administrator;
 - (b) The tape recordings or transcripts of the hearings before the hearing examiner;
 - (c) All documents and exhibits offered into evidence at the hearing;
 - (d) Memoranda, if any, of ex parte communications as required by § 4002.3 and § 4002.4;
 - (e) Notices of hearings and proofs of service;
 - (f) Landlord registration files and any other documents found in the public record of which the Rent Administrator took official notice; and
 - (g) All pleadings filed with the Rent Administrator.

4008 MOTIONS.

- 4008.1 Application for an order or other relief shall be made by filing a written motion; Provided, that motions may be made orally at a hearing.
- 4008.2 Written motions shall be typed and double-spaced and shall state the reason(s) why the motion is requested.
- 4008.3 A copy of each written motion shall be served on each opposing party and the hearing examiner.
- 4008.4 Each opposing party shall have an opportunity to respond to each written motion within five (5) days after service of the motion, except motions for interlocutory appeals.
- 4008.5 The hearing examiner shall render a decision in writing on each motion made which shall include the reasons for the ruling.
- 4008.6 A party may file a motion to continue or reschedule a hearing for good cause with the hearing examiner provided the motion is served on opposing parties and the hearing examiner at least five (5) days before the hearing; however, in extraordinary circumstances, the time limit may be shortened by the hearing examiner.

4009 RULES OF EVIDENCE.

- 4009.1 Evidence at a hearing may be any information presented to the hearing examiner to prove facts at issue, and may include the testimony of witnesses, records, documents, or other proof.
- 4009.2 Testimony or other evidence offered may be excluded from consideration by the hearing examiner if it is irrelevant, immaterial or unduly repetitious.
- 4009.3 All testimony and other evidence offered at a hearing, but excluded by the hearing examiner, shall be retained as part of the official record of the hearing or petition.
- 4009.4 All testimony and other evidence shall be given in accordance with the provisions of the D.C. Administrative Procedure Act.
- 4009.5 Each party shall have the right to present their case in person or through a representative, to submit rebuttal evidence, and to conduct such cross-examination as may be required for full disclosure of the facts at issue.
- 4009.6 The parties may stipulate as to any matter of fact which shall satisfy a party's burden of proving that fact.

4009.7 During a hearing, a hearing examiner, on his or her own motion or on the motion of a party, may take official notice of the following:

- (a) Matters of common knowledge;
- (b) Any information contained in the record of the RACD; or
- (c) Any information contained in the records of any federal or District agency, board or commission; Provided, that all parties have been given notice of the hearing examiner's intention to do so and have been given an opportunity to show the contrary.

4009.8 Official notice taken of any fact shall satisfy a party's burden of proving that fact.

4009.9 If, after a hearing has been concluded, the hearing examiner takes official notice of information contained in public records, as described in this section, each party is entitled to be informed in writing of the fact found by the hearing examiner, and to be provided an opportunity to contest the fact(s) officially noticed before a decision is issued.

4010 SUBPOENAS.

4010.1 Any party may request the Rent Administrator to issue a subpoena requiring the attendance and testimony of witnesses or the production of documents or other evidence in accordance with § 204 of the Act.

4010.2 Each request of a subpoena shall be submitted in writing at least five (5) days prior to the hearing, and shall specify with particularity the books, papers, or person whose testimony is desired.

4010.3 The Rent Administrator shall rule promptly on each request for a subpoena.

4010.4 All subpoenas shall be served on the witnesses or parties prior to the hearing in the manner, and by any person authorized, in accordance with the Civil Rules of the Superior Court of the District of Columbia.

4010.5 Any person to whom a subpoena is directed may file a motion to quash or limit the subpoena, setting forth the reasons why the subpoena should not be complied with or why it should be limited in scope.

4010.6 Motions to quash or limit subpoenas shall be filed with the Rent Administrator prior to the hearing, or with the hearing examiner as a preliminary matter during the hearing.

4011 INTERLOCUTORY APPEALS.

4011.1 Rulings of a hearing examiner may not be appealed during the course of a hearing unless the hearing examiner certifies the ruling for review by the Commission.

4011.2 A party may move the hearing examiner to certify to the Commission an interlocutory appeal of a ruling or order other than a final decision and order.

4011.3 The hearing examiner shall certify an interlocutory appeal only if he or she determines that the issue presented is of such importance to the proceeding that it requires the immediate attention of the Commission, and only if the following are shown:

- (a) The ruling involves an important question of law or policy requiring interpretation of the Act or this title, and about which there is substantial basis for difference of opinion; and
- (b) Either of the following applies:
 - (1) An immediate ruling will materially advance the completion of the proceeding; or
 - (2) Denial of an immediate ruling will cause undue harm to the parties or the public.

4011.4 A party seeking review by interlocutory appeal shall file a motion for certification within two (2) days of a ruling by the hearing examiner. The hearing examiner shall rule on the motion within five (5) days following the filing of the motion.

4011.5 If certification is denied, the ruling may be raised as part of an appeal of the final decision of the Rent Administrator.

4011.6 The hearing examiner may suspend the RACD hearing during the time an interlocutory appeal is pending.

4012 DECISIONS OF HEARING EXAMINERS.

4012.1 Hearing examiners shall prepare a draft decision for each case or petition. Each draft decision shall be immediately transmitted to the Rent Administrator for review.

4012.2 Each draft decision shall contain the following:

- (a) Findings of fact and conclusions of law (including the reasons or basis of those findings) upon each material contested issue of fact and law presented on the record;

- (b) A proposed order as to the final disposition of the hearing or petition, including appropriate relief and any penalties; and
- (c) A statement of the parties right to appeal to the Commission.

4012.3 If the hearing examiner concludes that some contested issues of fact are not material to the proceeding and therefore do not need to be decided, specific findings of fact and conclusions of law to that effect shall be included in the draft decision.

4012.4 Pursuant to the written delegation of authority issued under § 3900.3, if the person who renders the decision and order is not the same person who has heard the evidence, then the procedures of D.C. Code § 1-1509(d) (1981), shall be followed.

4012.5 Each decision shall become final and effective when rendered pursuant to § 4012.4, except that if a motion for reconsideration is filed, the decision shall not become final until the motion is disposed of in accordance with § 4013.

4012.6 The ten (10) day time limit in which an appeal to the Commission shall be filed, as prescribed in § 216 of the Act and § 3802.2, shall begin to run when the decision becomes final.

4013 RECONSIDERATION OF FINAL DECISIONS.

4013.1 Any party served with a final decision and order may file a motion for reconsideration with the hearing examiner within ten (10) days of receipt of that decision, only in the following circumstances:

- (a) If there has been a default judgment because of the non-appearance of the party;
- (b) If the decision or order contains typographical, numerical, or technical errors;
- (c) If the decision or order contains clear error that is evident on its face; or
- (d) If the existence of newly discovered evidence which could not have been discussed prior to the hearing date has been discovered.

4013.2 A motion for reconsideration shall be granted or denied in writing by the hearing examiner within ten (10) days after receipt, and may only be granted on the basis of circumstances set forth in § 4013.1.

4013.3 The denial of a motion for reconsideration shall not be subject to reconsideration or appeal.

4013.4 The filing of a motion for reconsideration, shall act as a stay upon the effectiveness of the Rent Administrator's order until such time as the motion is ruled upon by the Rent Administrator, or denied pursuant to § 4013.2.

4013.5 Failure of a hearing examiner to act on a motion for reconsideration within the time limit prescribed by § 4013.2 shall constitute a denial of the motion for reconsideration.

4013.6 The ten (10) day time limit in which an appeal to the Commission shall be filed, as prescribed in § 216 of the Act and § 3802.2, shall begin to run when the decision becomes final.

4014 CONTINUANCES, LATE FILINGS, AND AMENDMENT OF PLEADINGS.

4014.1 Any party may move to request a continuance of any scheduled hearing or extension of time to file a pleading or leave to amend a pleading if the motion is served on opposing parties and the Rent Administrator at least five (5) days before the hearing or the due date; however, in the event of extraordinary circumstances, the time limit may be shortened by the Rent Administrator.

4014.2 Motions shall set forth good and sufficient cause for the relief requested.

4014.3 Conflicting engagements of counsel, absence of counsel, or the employment of new counsel shall not be regarded as good cause for continuance unless set forth promptly after notice of the hearing has been given.

4015 SHOW CAUSE HEARINGS.

4015.1 A show cause hearing is a hearing which is initiated by the Rent Administrator after an investigation by the Rent Administrator has resulted in a determination that there are substantial grounds to believe that violations of the Act may have occurred.

4015.2 The investigation of possible violations of the Act may be conducted as a result of the review of the records of the RACD or the records of federal or District courts and agencies.

4015.3 Investigations of possible violations may also be conducted on the basis of complaints and allegations received orally or in writing by the Rent Administrator.

4015.4 If an investigation by the Rent Administrator finds substantial grounds to believe that possible violations of the Act have occurred, a notice of a show cause hearing shall be prepared and served on the alleged violator.

4015.5 The notice of a show cause hearing shall state clearly the section of the Act or this subtitle which has allegedly been violated, along with a brief statement of the evi-

dence found during the investigation which supports the determination that an alleged violation has occurred.

- 4015.6 The notice shall also set forth the proposed corrective action to be taken against the alleged violator.
- 4015.7 Notice of a show cause hearing shall be served on the alleged violator in accordance with the provisions of § 904 of the Act, not less than fifteen (15) days before the hearing, and shall contain the date, time, and place of the hearing.
- 4015.8 At a show cause hearing, the burden of proof shall be upon the Enforcement Division of RACD.
- 4015.9 Show cause hearings shall be conducted consistent with the provisions of this chapter for the conduct of hearings.
- 4015.10 The issues in a show cause hearing shall be disposed of in a final decision and order of the Rent Administrator which may be appealed to the Commission.
- 4015.11 There shall be no intervenors as a "matter of right" in a show cause hearing.
- 4015.12 A request to intervene may be made by motion to the hearing examiner in accordance in § 3907.
- 4015.13 Affected housing providers, tenants and other persons with relevant evidence shall be permitted to testify as witnesses at show cause hearings.

4016 COMPLIANCE.

- 4016.1 A notice of non-compliance shall be issued by the Rent Administrator when an investigation results in a determination that a failure to comply with an order of the Rent Administrator or the Commission may have occurred.
- 4016.2 An investigation of possible failure to comply with an order of a hearing examiner or the Commission may be conducted for the following reasons:
- (a) As a result of the review of the records of the RACD and other District agencies; and
 - (b) On the basis of complaints and allegations received orally or in writing by the Rent Administrator or the Commission.
- 4016.3 If an investigation by the Rent Administrator has found substantial grounds to believe that possible failure to comply with an order may have occurred, a notice of non-compliance shall be prepared and served on the alleged violator.

4016.4 The notice of non-compliance shall state clearly the section of the order which has allegedly not been complied with, along with a brief statement of the substantial evidence found during the investigation which supports the determination that a failure to comply has occurred.

4016.5 A notice of non-compliance shall be served on the alleged violator in accordance with the service of notice provisions under § 3911, and shall contain a statement providing the alleged violator with ten (10) days to reply to the notice of non-compliance.

4016.6 If the alleged violator fails to demonstrate compliance within the ten (10) days allowed, the Rent Administrator shall immediately refer the matter to the D.C. Office of the Corporation Counsel for appropriate prosecution.

4017 RELIEF FROM JUDGMENT.

4017.1 On motion and upon such terms as are just, the Rent Administrator may relieve a party from a final judgment, order, or proceeding for the following reasons:

- (a) Mistake, inadvertence, surprise, excusable neglect; newly discovered evidence which by due diligence could not have been discovered in time to move for reconsideration under § 4013;
- (b) Fraud, misrepresentation, or other misconduct of an adverse party; or
- (c) The decision has been satisfied, released, or discharged, or a prior decision upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the decision have prospective application.

4017.2 The motion filed pursuant to § 4017.1 shall be filed within a reasonable time; Provided, that motions filed pursuant to §§ 4017.1(a) and (b) shall not be filed more than one (1) year after the judgment, order, or proceeding was entered or taken.

4017.3 A motion under § 4017.1 does not affect the finality of a judgment or suspend its operation.

4018 RENT ADMINISTRATOR PROCEDURES GENERALLY.

4018.1 When these rules are silent on a procedural issue before the Rent Administrator, issues must be decided by using as guidance the current rules of civil procedure published and followed by the Superior Court of the District of Columbia.

4019 ATTORNEY'S FEES-RENT ADMINISTRATOR.

4019.1 All motions for an award of attorney's fees in a rental housing case shall be filed within thirty (30) days of service of the final order.

4019.2 When the Rent Administrator determines that it is appropriate to award of attorney's fees, the award of attorney's fees shall be made in accordance with § 3825 of these rules.

4099 DEFINITIONS.

4099.1 The provisions of § 3899 of chapter 38 of this title and the definitions set forth in that section shall be applicable to this chapter.

CHAPTER 41: COVERAGE AND REGISTRATION

4100 COVERAGE UNDER THE ACT: EXCLUSIONS

- 4100.1 The jurisdiction of the Rent Administrator and of the Rental Housing Commission extends to each rental unit in the District of Columbia which is covered by the Act (except titles III and VIII) pursuant to § 4200.3, and to each housing accommodation on which a covered rental unit is located.
- 4100.2 The jurisdiction of the Rent Administrator and of the Rental Housing Commission extends to each tenant of a rental unit covered by the Act (except titles III and VIII) pursuant to § 4200.3; and to each housing provider of a covered rental unit.
- 4100.3 Each rental unit in the District of Columbia is covered by the Act except those rental units excluded from coverage by § 205(e) of the Act; Provided, that no rental unit shall be excluded under § 205(e)(4) of the Act (the non-profit exclusion) without the prior approval of the Rent Administrator issued pursuant to § 4105.

4101 REGISTRATION REQUIREMENTS OF RENTAL UNITS AND HOUSING ACCOMMODATIONS

- 4101.1 The registration requirements of this section shall apply to each rental unit covered by the Act as provided by § 4100.3 and to each housing accommodation of which the rental unit is a part, including each rental unit exempt from the Rent Stabilization Program.
- 4101.2 The terms "to register" and "registration" shall be understood to include filing with the Rent Administrator the following:
- (a) For a rental unit covered by the Rent Stabilization Program, the information required to establish and regulate rent ceilings pursuant to § 205(f) of the Act and § 4204; or
 - (b) For rental units exempt from the Rent Stabilization Program the information required to establish the claim of exemption pursuant to § 205(a) of the Act and § 4103.
- 4101.3 The registration requirements of the Act shall be satisfied for any rental unit not properly registered under the Rental Housing Act of 1980 only if the following applies:
- (a) The housing provider of the rental unit has properly completed and filed with the Rent Administrator a new Registration/Claim of Exemption form pursuant to the Act and any regulations promulgated thereunder; and

- (b) The housing provider has complied with the posting or mailing requirements of § 4101.6, and certified compliance to the Rent Administrator on a form provided for such certification.

4101.4 The registration requirements of the Act shall be satisfied for any unit previously registered under the Rental Housing Act of 1980 only if the following occurs:

- (a) The housing provider of the rental unit has previously completed and filed with the Rent Administrator a Registration/Claim of Exemption form (or equivalent) pursuant to the Rental Housing Act of 1980; and
- (b) The housing provider has complied with the posting and mailing requirements of § 4101.7, and certified compliance to the Rent Administrator on a form provided for the certification.

4101.5 Each Registration/Claim of Exemption form filed with the Rent Administrator under the Act or under the Rental Housing Act of 1980 shall be available for public inspection in the office of the Rent Administrator.

4101.6 Each housing provider who files a Registration/Claim of Exemption form under the Act shall, prior to or simultaneously with the filing, post a true copy of the Registration/Claim of Exemption form in a conspicuous place at the rental unit or housing accommodation to which it applies, or shall mail a true copy to each tenant of the rental unit or housing accommodation.

4101.7 Any housing provider who filed a proper Registration/Claim of Exemption form under the Rental Housing Emergency Act of 1985, D.C. Law 6-18, or under the Rental Housing Act of 1985, D.C. Law 6-10 in accordance with the emergency regulations, 14 DCMR chapters 38 through chapter 48, effective July 29, 1985 and repromulgated on November 22, 1986, shall be deemed to be properly registered or to have filed a proper claim of exemption under chapter 41; Provided, that a housing provider who did not comply with the substances of § 4101.6 shall, within thirty (30) days of the effective date of this subsection, comply with § 4101.6.

4101.8 Each housing provider of a rental unit properly registered under the Rental Housing Act of 1980 who does not re-register the unit under the Act, shall within thirty (30) days of the effective date of this chapter post a true copy of the Registration/Claim of Exemption form filed under the Rental Housing Act of 1980 in a conspicuous place at the rental unit or housing accommodation to which it applies, or shall mail a true copy to each tenant of the rental unit or housing accommodation.

4101.9 Any housing provider who has failed to satisfy the registration requirements of the Act pursuant to §§ 4101.3 or 4101.4 shall not be eligible for and shall not take or implement the following:

- (a) Any upward adjustment in the rent ceiling for a rental unit authorized by the Act;
- (b) Any increase in the rent charged for a rental unit which is not properly registered; or
- (c) Any of the benefits which accrue to the housing provider of rental units exempt from the Rent Stabilization Program.

4102 REGISTRATION PROCEDURES

4102.1 Each rental unit in a housing accommodation shall be registered on the Registration/Claim of Exemption form filed for the housing accommodation of which the rental unit is a part.

4102.2 Each housing provider who registers one (1) or more rental units shall file with the Rent Administrator a Registration/Claim of Exemption form for each housing accommodation with a separate address, except as provided in § 4102.3.

4102.3 Where one (1) or more separate housing business licenses have been issued for a multibuilding housing complex, the housing provider shall file a Registration/Claim of Exemption form for each separate housing business license.

4102.4 For the purposes of the Act and registration requirements, a residential condominium unit rented or offered for rent shall be deemed to be a housing accommodation consisting of one (1) rental unit, and shall be registered as such.

4102.5 Where a housing provider is required to have a housing business license, the address of the housing accommodation on the Registration/Claim of Exemption form shall be the same as that on the housing business license.

4102.6 Where the housing provider is not required to have a housing business license, the address of the housing accommodation on the Registration/Claim of Exemption form shall be the same as that maintained by the District of Columbia Department of Finance and Revenue for assessment of real property taxes against the housing accommodation.

4102.7 If a housing accommodation required to be registered under the Act contain one (1) or more rental units excluded from coverage under the Act pursuant to § 205(e), or one (1) or more rental units exempt from the Rent Stabilization Program pursuant to § 205(a), the housing provider shall identify the excluded and/or exempt rental units on the Registration/Claim of Exemption form, and specify the section of the Act under which the exemption or exclusion is claimed.

4102.8 Each housing provider registering under the Act shall submit to the Rent Administrator an original and one (1) copy of each Registration/Claim of Exemption form to be filed.

4102.9 The Rent Administrator shall accept for filing, date-stamp and assign a registration number to each Registration/Claim of Exemption form that meets the requirements of the Act and of this chapter; and shall promptly return to the housing provider the date-stamped copy of the form bearing the registration number.

4102.10 If the housing accommodation has a housing business license, the registration number shall be identical to the customer service number used by the D.C. Department of Consumer and Regulatory Affairs.

4102.11 If the housing accommodation is not required to be licensed, the Rent Administrator shall issue a registration number to the housing accommodation. The registration number for non-licensed housing accommodations may be the same number issued to the accommodation under the Rental Housing Act of 1980.

4103 AMENDMENTS TO REGISTRATION/CLAIM OF EXEMPTION FORMS

4103.1 Each housing provider of a rental unit or units covered by the Act shall file an amendment to the Registration/Claim of Exemption form provided by the Rent Administrator, in the following circumstances:

- (a) Within thirty (30) days after a person becomes the housing provider of a rental unit or housing accommodations covered by the Act;
- (b) Within thirty (30) days after the termination of the exempt status of a rental unit or housing accommodation;
- (c) Within thirty (30) days after any change in the ownership or management of a registered housing accommodation;
- (d) Within thirty (30) days after the implementation of any rent increase or decrease allowed pursuant to §§ 210, 212, 214 or 215 of the Act, or any substantial change in the related services or facilities pursuant to § 211 of the Act; or
- (e) Within thirty (30) days after the implementation of any vacant accommodation rent increase pursuant to § 213 of the Act.

4104 DEFECTIVE REGISTRATION

4104.1 The Rent Administrator shall review each Registration/Claim of Exemption form in order to determine if the form has been properly completed. If the form has not

been properly completed, the Rent Administrator shall notify the housing provider in writing.

- 4104.2 Any housing provider who has been notified of a defective registration and who does not correct the defects in thirty (30) days shall not be eligible for and shall not take or implement the following:
- (a) Any upward adjustment in the rent ceiling for a rental unit authorized by the Act;
 - (b) Any increase in the rent charged for a rental unit which is not properly registered; or
 - (c) Any of the benefits which accrue to the housing provider of rental units exempt from the Rent Stabilization Program.
- 4104.3 A Registration/Claim of Exemption form shall be considered defective under each of the following circumstances:
- (a) If it is not signed;
 - (b) If it is not completed in accordance with instructions accompanying the form, or if it contains incorrect information;
 - (c) If it is not accompanied by the required supporting documents;
 - (d) If it is not accompanied by proof that the annual rental unit fee was paid as required by § 401 of the Act; or
 - (e) If a certification in accordance with § 4101.3(b) is not filed.
- 4104.4 If the Rent Administrator believes a registration statement is defective, whether at the time of filing or subsequent to filing, the Rent Administrator shall notify the housing provider in writing of the specific defect(s) and allow the housing provider thirty (30) days to correct the defect(s).
- 4104.5 If the defects in the registration statement are corrected in a timely manner, the registration shall be deemed to be proper from the date it was filed.
- 4104.6 If the registration statement does not contain the name of the housing provider, the Rent Administrator shall require that an amendment to the registration statement be filed within thirty (30) days which provides the identity of the housing provider.
- 4104.7 If the housing provider is not also the owner of the housing accommodation the Rent Administrator shall require that an amendment to the registration statement

be filed within thirty (30) days which provides a full statement of ownership and the relationship between the owner(s) and the housing provider.

4104.8 The Rent Administrator may suspend a proceeding if an amendment to the registration statement is needed under this section or may continue the proceeding.

4105 EXCLUSIONS FROM COVERAGE BY THE ACT

4105.1 A rental unit shall be excluded from coverage by the Act and this chapter at the election of the housing provider under the following circumstances:

- (a) If the rental unit is operated by a foreign government as a residence for diplomatic personnel under § 205(e)(1) of the Act;
- (b) If the rental unit is operated by a hospital, convalescent, nursing or personal care home, or other entity which has as its primary purpose providing diagnostic care and treatment of disease, and the rental unit is occupied or intended for occupancy by a recipient of the diagnostic care or treatment of disease; or
- (c) If the rental unit is part of a dormitory as defined in § 103(11) of the Act, and the rental unit is occupied or intended for occupancy by a matriculating student.

4105.2 A rental unit which is used or intended for use as long-term temporary housing under § 205(e)(4) of the Act may be excluded from coverage by the Act by order of the Rent Administrator issued pursuant to § 4105.3.

4105.3 A housing provider who proposes to operate a rental unit under § 205(e)(4) of the Act shall petition the Rent Administrator for an order of exclusion on a form approved by the Rent Administrator (a "non-profit charitable petition").

4105.4 A non-profit charitable petition shall be filed in duplicate and shall include the following:

- (a) The name and address of the applicant housing provider, and documentation of the applicant's exemption from federal income tax under § 501(c)(3) of the *Internal Revenue Code* and exemption from the D.C. franchise tax;
- (b) A schedule identifying each rental unit covered by the petition, whether the rental unit is vacant or occupied, and, if occupied, the name of the tenant and the rent and the rent ceiling for the rental unit, if any;
- (c) The plan of comprehensive social services to be offered by the applicant housing provider to the tenant, listing in detail the services to

be provided and the obligations to be assumed by the tenant and the applicant housing provider, and the criteria for qualification to be a tenant of a rental unit excluded from coverage under the Act;

- (d) A schedule of proposed rents for each rental unit under the petition including the proposed rent and rent ceiling for each rental unit for which exclusion may be denied under § 4105.8(b).

4105.5 Upon receipt of a properly executed and filed non-profit charitable petition, the Rent Administrator shall promptly notify each tenant of an occupied rental unit covered by the petition of the following:

- (a) The pendency of the petition;
- (b) The tenant's right to participate voluntarily in the proposed plan of comprehensive social services in which case the tenant's rental unit may be excluded from coverage by the Act, or to decline to participate in the proposed plan in which case the tenant's rental unit shall be covered by the Act; Provided, that no tenant may elect to participate in the proposed plan if the tenant does not meet the income requirements of § 4105.9(b); and
- (c) The tenant's right to oppose or contest the non-profit charitable petition by filing written exceptions and objections with the Rent Administrator.

4105.6 The notice required by § 4105.5 shall be in a form approved by the Rent Administrator, and shall do the following:

- (a) Explain the plan and the effect of the proposed exemption in sufficient detail to permit the tenant to make an informed choice; and give each affected tenant not less than thirty (30) days in which to make the election to participate in the plan or not and to file written exceptions and objections, if any;
- (b) State clearly that an affirmative election to participate in the plan is irrevocable for the duration of the tenancy;
- (c) Provide a space for the tenant to indicate his or her irrevocable election to participate or not in the proposed comprehensive plan, or to decline to participate and state his or her exceptions and objections, if any, to the plan; and
- (d) Be returnable to the Rent Administrator over the tenant's signature;

- 4105.7 Upon consideration of properly filed exceptions and objections, the Rent Administrator may grant or deny the non-profit charitable petition or shall convene a hearing under § 216 of the Act to consider any issues of fact which may be raised by exceptions and objections to the petition.
- 4105.8 Subject to § 4105.9, the Rent Administrator shall do the following:
- (a) Approve a non-profit charitable petition for each vacant rental unit and each rental unit occupied by a tenant who elects to participate in the applicant's proposed plan of comprehensive social services; and
 - (b) Dismiss a non-profit charitable petition for each rental unit occupied by a tenant who elects not to participate in the applicant's proposed plan or who fails to make an election within the time provided; Provided, that the Rent Administrator shall grant exclusion to a covered, occupied rental unit at any time if the eligible tenants under § 4105.9(b) elect to participate in the plan.
- 4105.9 The Rent Administrator shall approve a non-profit charitable petition and issue an order of exclusion only if the Rent Administrator finds the following:
- (a) The rental unit is operated under the proposed plan of comprehensive social services;
 - (b) The rental unit shall be occupied by two (2) or more tenants or families of two (2) or more members who have incomes less than fifty percent (50%) of the median income in the District of Columbia; or who previously indicated agreement to participate in the housing provider's plan under the Act or prior rent control law and met the income requirements at the time of the previous election;
 - (c) The rental unit is occupied as long-term temporary housing;
 - (d) The rent for the rental unit is less than the operating costs including debt service paid or projected to be paid by the applicant housing provider for the rental unit; and
 - (e) The applicant housing provider is recognized as a non-profit charitable corporation by the District of Columbia and federal governments.
- 4105.10 The rent ceiling for a rental unit denied exclusion from coverage by the Act under §§ 4105.7 or 4105.8(b) shall be, at the housing provider's election, either of the following:

- (a) The rent ceiling for the rental unit on the date of filing of the non-profit charitable petition; or
- (b) An amount equal to seventy-five percent (75%) of rent levels established by § 303(b) of the Act; Provided, that a housing provider's election under this subsection (b) shall constitute an irrevocable waiver of the right to petition for or be granted a rent ceiling increase for the rental unit under § 212 of the Act and § 4209.

4106 CLAIMS FOR RECOGNITION OF EXEMPTION FROM RENT STABILIZATION PROGRAM

- 4106.1 Each housing provider who claims a rental unit is exempt from the Rent Stabilization Program of the Act shall file a Registration/Claim of Exemption form with the Rent Administrator.
- 4106.2 Each claim of exemption shall contain a properly executed oath or affirmation by the housing provider that the claim is valid.
- 4106.3 A claim of exemption containing a properly executed oath or affirmation of the housing provider shall be deemed approved upon filing with the Rent Administrator.
- 4106.4 The Rent Administrator may initiate a review of a claim of exemption at any time; and a review may be initiated upon motion of a party to a petition.
- 4106.5 The Rent Administrator may request supporting documentation to substantiate a claim of exemption.
- 4106.6 Failure to file or failure to provide accurate information in accordance with the Act and this subtitle, may result in the denial of the claim of exemption and/or the imposition of other penalties and sanctions.
- 4106.7 Claims of exemption found to contain defects may be corrected by the housing provider in accordance with § 4104.
- 4106.8 Prior to the execution of a lease or other rental agreement, a prospective tenant of any unit exempted under § 205(a) of the Act shall receive from the housing provider a written notice advising the prospective tenant that rent increases for the housing accommodation are not regulated by the rent stabilization program.
- 4106.9 The Rent Administrator shall approve a claim of exemption under § 205(a)(1) of the Act, where a housing accommodation or rental unit is owned by the federal or District of Columbia government.
- 4106.10 The Rent Administrator shall approve a claim of exemption under § 205(a)(1) of the Act, where a housing accommodation or rental unit is enrolled in a formal

program of the federal or District of Columbia government under which the operating expenses or mortgage are subsidized and the rents charged the tenant(s) are determined and regulated by formula.

4106.11 The Rent Administrator shall approve a claim of exemption under § 205(a)(2) of the Act, where the rental unit for which exemption is claimed meets the following requirements:

- (a) Is in a housing accommodation for which the building permit was issued after December 31, 1975;
- (b) Is in an addition to a housing accommodation converted from non-residential space, and was covered by a Certificate of Occupancy for housing use issued after January 1, 1980; and as to subsections (a) and (b) of this section; or
- (c) The claim for exemption is accompanied by a certification that where the construction of the housing accommodation required the demolition of an existing housing accommodation subject to this Act, the number of newly constructed rental units exceeds the number of demolished rental units.

4106.12 The Rent Administrator shall approve a claim of exemption under § 205(a)(3) of the Act, if it meets the following requirements:

- (a) Where the rental unit for which exemption is claimed is owned by an individual who has an interest with no more than three (3) other natural persons in four (4) or fewer rental units;
- (b) Where the exemption includes an affirmation that the claim is valid;
- (c) Where the exemption includes the name and address of each person having a direct or indirect interest in the rental unit; and
- (d) Where the exemption includes the addresses of all other housing accommodations or rental units located in the District of Columbia in which the owners, individually or collectively, have a direct or indirect interest, and the number of rental units in each housing accommodation.

4106.13 The Rent Administrator shall disapprove a claim of exemption under § 205(a)(3) of the Act, where the rental unit for which exemption is claimed is one of the the following:

- (a) If it is owned in whole or in part by a partnership or corporation, except as authorized by § 4107 of this subtitle or § 205 (a)(3)(D) of the Act;
- (b) If it is owned by five (5) or more individuals; or
- (c) If it is owned in whole or in part by any individual who has an ownership interest, direct or indirect, in five (5) or more rental units, whether in the same structure or in different structures.

4106.14 A housing accommodation shall be exempt under § 205(a)(4) of the Act, where it meets the following requirements:

- (a) The housing accommodation was continually vacant and not subject to a rental agreement for the period beginning on January 1, 1985, and continuing at least until the effective date of the Act; and
- (b) Upon re-rental, the housing provider certifies to the Rent Administrator that the housing accommodation fulfills the conditions set forth in subsection (a) and is in substantial compliance with the housing regulations when offered for rent.

4106.15 The Rent Administrator shall approve a claim of exemption under § 205(a)(7) of the Act, where the rental unit for which exemption is claimed is one of the following requirements:

- (a) Is part of a housing accommodation regulated by a Building Improvement Plan executed under the District of Columbia Apartment Improvement Program, Inc.; or
- (b) Is part of a housing accommodation regulated by and receiving assistance under any multi-family assistance program of the D.C. Department of Housing and Community Development.

4107 COOPERATIVE EXEMPTIONS

4107.1 Cooperative units occupied by cooperative members shall be exempt from the rent stabilization program of the Act.

4107.2 All cooperative units rented to non-proprietary leaseholders are covered by the rent stabilization program of the Act unless exempted § 205(a)(5) of the Act, and is registered by the housing provider, pursuant to §§ 4101 and 4102, using both the street address of the cooperative housing accommodation and the identification number or letter of the unit.

4107.3 The following requirements shall apply to cooperatives:

- (a) Any units rented from an incorporated cooperative association may not be exempt and shall be registered by the association; and
- (b) A unit rented from individual cooperative members and shareholders shall be entitled to exemption if the unit is subject to a proprietary lease held by four (4) or fewer natural persons.

4107.4 The following requirements shall apply to condominiums:

- (a) Any rental units owned by a corporation, partnership, or condominium association may not be exempt and shall be registered by the association; and
- (b) Unit(s) rented from condominium owner(s) who are natural person shall be registered by the housing provider unless a claim of exemption for the unit(s) is approved.

4107.5 Owners of condominium units, which are leased pursuant to the Elderly Tenancy provisions of § 208(a) of the Rental Housing Conversion and Sales Act of 1980, D.C. Law 3-86, shall register the units, identifying each unit and providing the address of the housing accommodation of which each unit is a part.

4108 ANNUAL REGISTRATION FEE

4108.1 Each housing provider filing pursuant to § 4101.1 shall pay the annual registration fee.

4108.2 Housing providers of rental units or housing accommodations not required to have a housing business license shall be billed by the Rent Administrator during each fiscal year.

4108.3 The annual billing shall provide for payment of the annual registration fee to the D.C. Treasurer.

4108.4 Housing providers of housing accommodations required to have a housing business license shall be billed for the annual registration fee at the time of the billing for the housing business license renewal.

4108.5 Housing providers of newly purchased housing accommodations shall pay the fee at the time the housing business license application is filed with the Department of Consumer and Regulatory Affairs.

4108.6 Failure to pay the annual registration fee for each rental unit within sixty (60) days of receipt of the bill shall result in a determination by the Rent Administrator that the registration of that rental unit or housing accommodation is defective pursuant to § 4104.

4108.7 A housing provider shall not collect any rent increases otherwise authorized until the registration fee is paid.

4199 DEFINITIONS

4199.1 The provisions of § 3899 of chapter 38 of this title and the definitions set forth in that chapter shall be applicable to this chapter.

CHAPTER 42: RENT, BASE RENT, RENT CEILINGS AND ADJUSTMENTS

4200 GENERAL PROVISIONS

- 4200.1 The rent ceiling establishes the maximum amount of rent that a housing provider may legally demand or receive for a rental unit which is covered by the Rent Stabilization Program of the Act.
- 4200.2 Each rental unit covered by the Rent Stabilization Program shall have an initial rent ceiling established pursuant to § 206(a) of the Act and § 4201; Provided, that no rent ceiling shall be established for any rental unit exempt from the program pursuant to § 205(a) of the Act.
- 4200.3 If a rental unit has a rent ceiling, the rent for that unit may legally be equal to or less than the rent ceiling, but the rent shall not be more than the rent ceiling.
- 4200.4 The Act regulates rent ceilings by determining which rental units shall have a rent ceiling, and by setting the terms and conditions for every increase or decrease in the rent ceiling of a rental unit.
- 4200.5 A rent ceiling adjustment is any increase or decrease in a rent ceiling which is authorized by the Act, and taken and perfected by the housing provider in accordance with § 4204.
- 4200.6 The Act regulates the rent for each rental unit under the Rent Stabilization Program by requiring that the rent shall always be less than or equal to the rent ceiling, and by setting terms and conditions for every increase or decrease in rent for a rental unit covered by the Act.
- 4200.7 A rent adjustment is any increase or decrease in rent required or permitted by the Act and this chapter.
- 4200.8 An increase in the rent for a rental unit shall be authorized only by an increase in the rent ceiling taken and perfected pursuant to § 4204 and under the following conditions:
- (a) At the election of the housing provider pursuant to §§ 4206 and 4207;
 - (b) Under an order of the Rent Administrator issued pursuant to §§ 4209, 4210, 4211 or 4212;
 - (c) Under a voluntary agreement approved by the Rent Administrator pursuant to § 4213; or
 - (d) Under any prior rent control law and the regulations, if any, promulgated under that prior law.

4201 BASE RENT: APRIL 30, 1985. RENT CEILINGS

- 4201.1 The "base rent" for each rental unit covered by the Rent Stabilization Program on the effective date of the Act shall be the rent ceiling for the unit as of April 30, 1985, pursuant to § 103(4) of the Act.
- 4201.2 Except as provided in §§ 4201.3 and 4201.4, the base rent for each rental unit shall be established by determining the actual rent charged for the unit on September 1, 1983, adjusted to reflect the amount of each rent ceiling increase properly taken and perfected prior to September 1, 1983 under the Rental Housing Act of 1980 and regulations promulgated thereunder; any prior rent control law and the regulations, if any, promulgated thereunder; or pursuant to the order of a court of competent jurisdiction; Provided; that the adjustment called for in this paragraph shall not include any portion of a prior rent ceiling increase which was the basis for a rent increase already included in the actual rent charged on September 1, 1983.
- 4201.3 If a rental unit was vacant on September 1, 1983, or no rent was actually charged on that date, the base rent of that unit shall be established by applying the adjustments called for in § 4201.2 to the rent actually charged for the unit on the first day of the month immediately preceding September 1, 1983, during which rent was charged.
- 4201.4 If a rental unit which is subject to the Rent Stabilization Program of the Rental Housing Act of 1980 was first occupied as a rental unit after September 1, 1983 but before May 1, 1985, the base rent for that unit shall be the rent charged or chargeable for the unit during the initial leasing period when the unit was occupied after September 1, 1983.
- 4201.5 The rent ceiling for each rental unit covered by the Rent Stabilization Program of the Act on the effective date of the Act shall be determined by adding to the base rent for the unit established under §§ 4201.2, 4201.3 or 4201.4 the amount of each rent ceiling adjustment taken and perfected or ordered to be taken after September 1, 1983 but before May 1, 1985, pursuant to any of the following:
- (a) A judicial decision or order of any court of competent jurisdiction;
 - (b) An administrative decision of the Rent Administrator or the Commission (including decisions of the Rental Accommodations Commissions) issued in adjudication of a petition to adjust the rent ceiling under §§ 211, 212, 213, 215, or 217 of the Rental Housing Act of 1980 or any prior rent control;
 - (c) A rent ceiling adjustment of general applicability authorized by § 207(b) of the Rental Housing Act of 1980;

- (d) A rent ceiling adjustment for a vacant rental unit authorized by § 214 of the Rental Housing Act of 1980; and;
- (e) A rent ceiling adjustment established by a voluntary agreement approved by the Rent Administrator under § 216 of the Rental Housing Act of 1980.

4201.6 Regardless of the date of initial registration of a rental unit under the Act, no rent ceiling adjustment taken and perfected or ordered to be taken after April 30, 1985, shall be applied as an adjustment under § 4201.5 for the purpose of establishing the rent ceiling for the unit on April 30, 1985.

4202 RENT CEILING UPON TERMINATION OF EXCLUSION

4202.1 A rent ceiling shall be established for each rental unit excluded on April 30, 1985 from coverage under the Act by § 205(e) upon the occurrence after that date of any event which causes the unit to lose its § 205(e) exclusion and come under the provisions of the Rent Stabilization Program.

4202.2 The rent ceiling for a rental unit described in § 4202.1 shall be the lesser of the following:

- (a) The rent ceiling for that unit authorized under the Act or prior rent control law during the month immediately preceding the date upon which the unit became excluded from coverage under the Act or prior rent control law increased by the amount of each rent ceiling adjustment of general applicability authorized by § 206(b) of the Act or prior rent control law; or
- (b) The rent for that rental unit during the first month of the rent period following the event which caused the rental unit to lose its § 205(e) exemption, as established by the housing provider.

4202.3 The rent ceiling for a rental unit described in § 4202.1 shall be established on the first to occur as follows:

- (a) The date upon which the housing provider first complies with the registration requirements of § 4101.3; or
- (b) The date thirty (30) days following the event which causes the unit to lose its § 205(e) exclusion.

4203 RENT CEILING UPON TERMINATION OF EXEMPTION AND FOR NEWLY COVERED UNITS

4203.1 A rent ceiling shall be established for each rental unit exempt on April 30, 1985 from the Rent Stabilization Program by § 205(a) of the Act upon the occurrence after that date of any event which causes that rental unit to lose its exempt status under §§ 4106 or 4107.

- 4203.2 For each rental unit in a housing accommodation exempt from the rent Stabilization Program pursuant to a building improvement plan of the Apartment Improvement Program under § 205(a)(7) of the Act, the rent ceiling upon termination of that exemption shall be the rent established in the schedule of rents authorized by the building improvement plan.
- 4203.3 For each rental unit in a newly constructed housing accommodation for which the building permit was issued after December 31, 1975, and the construction of which required the demolition of a housing accommodation covered by the Rent Stabilization Program of the Act or prior rent control law, the rent ceiling shall be the rent during the first month of residential rental occupancy as established by the housing provider.
- 4203.4 For each condominium rental unit being returned to the rental market after April 30, 1975, and for each cooperative rental unit exempt on that date by § 205(a)(5) of the Act, the rent ceiling upon termination of the exemption shall be the rent ceiling authorized by the Act or prior rent control law during the month immediately preceding the date when the unit became exempt, increased by the amount of each rent ceiling adjustment of general applicability authorized during the exemption period by § 206(b) of the act or by prior rent control law.
- 4203.5 Notwithstanding the language of § 4202.4, a housing provider may, in addition, petition the Rent Administrator for a rent ceiling increase to recover the cost of capital improvements made to the unit during the exemption period, and the Rent Administrator shall consider and dispose of such petitions pursuant to § 4210.
- 4203.6 For each rental unit exempt under § 205(a), of the Act excluding subsections (2), (5) and (7), the rent ceiling for that unit upon termination of the exemption shall be the average rent for the unit during the last six (6) months of the exemption period increased by five percent (5%).
- 4203.7 The rent ceiling for a rental unit established under § 4203 shall be established as follows:
- (a) The date upon which the housing provider first complies with the registration requirements of § 4101.3; or
 - (b) The date, thirty (30) days following the event which causes the unit to lose its § 205(a) exemption.

4204 ADJUSTMENTS IN RENT CEILINGS GENERALLY

- 4204.1 The rent ceiling for a rental unit established by §§ 4201, 4202 or 4203 may be adjusted from time to time pursuant to the provisions of the Rent Stabilization Program.

- 4204.2 The rent ceiling may be adjusted by the housing provider without the prior approval of the Rent Administrator as follows:
- (a) By adjustment of general applicability authorized by § 206(b) of the Act and implemented pursuant to § 4206; or
 - (b) By vacancy adjustment authorized by § 213 of the Act, and implemented pursuant to § 4207.
- 4204.3 The rent ceiling may be adjusted by order of the Rent Administrator upon petition filed by the housing provider under any of the following:
- (a) For capital improvement adjustments authorized by § 210 of the Act and petitioned for pursuant to § 4210;
 - (b) For adjustments of related services and facilities authorized by § 211 of the Act and petitioned for pursuant to § 4211;
 - (c) For hardship adjustments authorized by §§ 206(c) and 212 of the Act and petitioned for pursuant to § 4209; and
 - (d) For substantial rehabilitation adjustments authorized by § 214 of the Act and petitioned for pursuant to § 4212.
- 4204.4 The rent ceiling may be adjusted pursuant to a seventy percent (70%) Voluntary Agreement authorized by § 215 of the Act, upon and approved by the Rent Administrator, and filed pursuant to § 4213.
- 4204.5 The rent ceiling may be adjusted by order of the Rent Administrator upon petition filed by one (1) or more tenants under § 216 of the Act for any of the following reasons:
- (a) To challenge or contest any base rent or rent ceiling established pursuant to §§ 4201, 4202 or 4203;
 - (b) To challenge or contest any discretionary rent ceiling adjustment implemented by a housing provider pursuant to § 4204.2;
 - (c) To challenge or contest any voluntary rent ceiling adjustment sought or implemented pursuant to § 4204.4; or
 - (d) To seek relief from or compensation for any unlawful or unapproved substantial reduction in related services of facilities, including a substantial reduction for which the housing provider has offered inadequate or no compensatory rent ceiling decrease.

- 4204.6 The rent ceiling may be adjusted by order of the Commission pursuant to § 202(a)(2) of the Act.
- 4204.7 The rent ceiling may be adjusted by or pursuant to an order of any court of competent jurisdiction.
- 4204.8 In calculating a rent ceiling adjustment, any fraction of a dollar of forty-nine cents (\$ 0.49) or less shall be rounded down to the nearest dollar, and any fraction of fifty cents (\$ 0.50) or more shall be rounded up to the nearest dollar.
- 4204.9 Except as provided in § 4204.10, any rent ceiling adjustment authorized by the Act and this chapter shall be taken and perfected within the time provided in this chapter, and shall be considered taken and perfected only if the housing provider has filed with the Rent Administrator a properly executed amended Registration/Claim of Exemption Form as required by § 4103.1, and met the notice requirements of § 4101.6.
- 4204.10 Notwithstanding § 4204.9, a housing provider shall take and perfect a rent ceiling increase authorized by § 206(b) of the Act (an adjustment of general applicability) by filing with the Rent Administrator and serving on the affected tenant or tenants in the manner prescribed in § 4101.6 a Certificate of Election of Adjustment of General Applicability, which shall do the following:
- (a) Identify each rental unit to which the election applies;
 - (b) Set forth the amount of the adjustment elected to be taken, and the prior and new rent ceiling for each unit; and
 - (c) Be filed and served within thirty (30) days following the date when the housing provider is first eligible to take the adjustment.
- 4204.11 A housing provider may take and perfect an upward rent ceiling adjustment pursuant to §§ 4204.9 and 4204.10 without simultaneously implementing a rent increase to the new rent ceiling, and the election not to implement a rent increase to the new ceiling shall not constitute a waiver or forfeiture of the housing-provider's right to implement the full rent increase at a later time.
- 4204.12 Where a housing provider is required to take and perfect a downward rent ceiling adjustment, the housing provider shall simultaneously implement a rent reduction to an amount equal to or less than the new ceiling.

4205 RENT INCREASES AND DECREASES

- 4205.1 If the rent for a rental unit on or after the effective date of the Act exceeds the authorized rent ceiling for the rental unit, the housing provider shall promptly implement a rent reduction to an amount equal to or less than the authorized rent ceiling.

- 4205.2 If the rent for a rental unit on or after the effective date of the Act is less than the authorized rent ceiling for the rental unit, the housing provider, unless otherwise prohibited by the Act, may implement a rent increase to an amount equal to or less than the authorized rent ceiling.
- 4205.3 A housing provider may charge as rent for a rental unit an amount less than the authorized rent ceiling without waiving or forfeiting the right to later implement a rent increase in compliance with § 4205.5 to an amount equal to or less than the authorized rent ceiling; Provided, that the housing provider has first taken and perfected all prior rent ceiling adjustments which establish the rent ceiling pursuant to §§ 4204.9 and 4204.10.
- 4205.4 A housing provider shall implement a rent adjustment by taking the following actions, and no rent adjustment shall be deemed properly implemented unless the following actions were taken:
- (a) The housing provider shall provide the tenant of the rental unit, not less than thirty (30) days written notice pursuant to § 904 of the Act, the following:
 - (1) The amount of the rent adjustment;
 - (2) The amount of the adjusted rent;
 - (3) The date upon which the adjusted rent shall become due; and
 - (4) The date and authorization for the rent ceiling adjustment taken and perfected pursuant to 4202.9;
 - (b) The housing provider shall certify to the tenant, with the notice of rent adjustment, that the rental unit and the common elements of the housing accommodations are in substantial compliance with the housing regulations or if not in substantial compliance, that any noncompliance is the result of tenant neglect or misconduct;
 - (c) The housing provider shall advise the tenant, with the notice of rent adjustment by petition filed with the Rent Administrator; and
 - (d) The housing provider shall simultaneously file with the Rent Administrator a sample copy of the notice of rent adjustment along with an affidavit containing the names, unit numbers, date and type of service provided, certifying that the notice was served on all affected tenants in the housing accommodation.

- 4205.5 Notwithstanding § 4205.4, a housing provider shall not implement a rent adjustment for a rental unit unless all of the following conditions are met:
- (a) The rental unit and the common elements of the housing accommodation are in substantial compliance with the DCMR 14, Housing Regulations, or any substantial noncompliance is the result of tenant neglect or misconduct;
 - (b) The housing provider has met the registration requirements of § 4102 with respect to the rental unit; and
 - (c) At least one hundred eighty (180) days shall have elapsed since the date of implementation of any prior rent increase.

4205.6 The rent which a housing provider may charge for a unit may be decreased by order of the Rent Administrator without at the same time reducing the rent ceiling upon adjudication of a petition filed by one (1) or more tenants under § 216 of the Act for any of the following reasons:

- (a) To seek relief from or compensation for any unlawful rent increase; or
- (b) To seek relief or compensation for the existence of prolonged housing code violations.

4205.7 Unless otherwise ordered by the Rent Administrator, each adjustment in rent charged may not exceed the amount of one (1) rent ceiling increase perfected but not implemented by the housing provider.

4205.8 If the difference between the rent ceiling and the rent charged for the rental unit consists of all or a portion of one (1) previously unimplemented rent ceiling adjustment, the housing provider may elect to implement all or a portion of the difference.

4205.9 Nothing in the Act or these rules shall be construed to prevent a housing provider, at the housing provider's election, from delaying for any period of time the implementation of any rent ceiling adjustment or from implementing less than the full amount of any rent ceiling adjustment.

4205.10 Any rent ceiling adjustment, or portion thereof, which remains unimplemented shall not expire and shall not be deemed forfeited or otherwise diminished.

4206 RENT CEILINGS ADJUSTMENTS OF GENERAL APPLICABILITY

4206.1 A rent ceiling adjustment of general applicability, authorized by § 206(b) of the Act, is an increase in the rent ceiling for a previously registered rental unit which may be taken and perfected at the election of the housing provider.

- 4206.2 The amount of increase in the rent ceiling which a housing provider may take and perfect under § 206(b) of the Act shall be the lesser of one of the following:
- (a) That percent of the previously authorized rent ceiling for the rental unit which is equal to the percent of increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for the Washington, D.C. Standard Metropolitan Statistical Area (SMSA) during the previous calendar year as certified by the Commission pursuant to § 202(a)(3) of the Act; or
 - (b) Ten percent (10%) of the previously authorized rent ceiling for the rental unit.
- 4206.3 A housing provider may take and perfect a rent ceiling adjustment of general applicability only once in any twelve (12) month period, and a housing provider who elects to perfect a rent ceiling adjustment for a rental unit under § 206(b) of the Act shall not be eligible to take and perfect another such adjustment during the twelve (12) month period immediately following the date of perfection of the prior adjustment of general applicability.
- 4206.4 A housing provider who so elects shall take and perfect a rent ceiling adjustment of general applicability in the manner set forth in § 4204.10, and the date of perfection shall be the date on which the housing provider satisfies the notice requirements of § 4101.6.
- 4206.5 Where a housing provider increases the rent for a rental unit to an amount equal to or less than the rent ceiling adjustment permitted by § 4206.1, the housing provider shall comply with the provisions of §§ 4205.4 and 4205.5, and the notices required by §§ 4101.6 and 4205.4(a) may be issued simultaneously to the affected tenant on a form of notice approved by the Rent Administrator.

4207 VACANCY RENT CEILING ADJUSTMENTS

- 4207.1 A vacancy rent ceiling adjustment, authorized by § 213(a) of the Act, is an increase in the rent ceiling for a previously registered rental unit which may be taken and perfected by a housing provider for a rental unit which became vacant under the conditions set forth in § 213(a) of the Act, but subject to the limitations of § 4207.3.
- 4207.2 The amount of a rent ceiling increase which a housing provider may take and perfect under § 213(a) of the Act shall be one of the following:
- (a) Twelve percent (12%) of the previously authorized rent ceiling for the unit; Provided, that no other twelve percent (12%) vacancy rent ceiling adjustment has been taken and perfected for the rental unit under this subchapter within the immediately preceding twelve (12) month period; or

- (b) The amount required to increase the rent ceiling for the rental unit to equal the rent ceiling of a previously registered, substantially identical rental unit in the same housing accommodation as specified in § 4207.4.

4207.3 Notwithstanding § 4207.1, a housing provider shall not take and perfect a rent ceiling adjustment authorized by § 213(a) of the Act (a vacancy adjustment) within the twelve (12) month period following the date of perfection of any rent ceiling adjustment for the rental unit under § 212 of the Act.

4207.4 For the purposes of § 4207.2(b), a "substantially identical rental unit" is a rental unit which meets the following requirements:

- (a) Is subject to the Rent Stabilization Program of the Act (is not exempt under § 205(a) or excluded under § 205(e);
- (b) Has essentially the same floor plan, square footage, comparable amenities and equipment, comparable location with respect to exposure and height (if exposure and height have previously determined rent), and is in comparable physical condition as the rental unit whose rent ceiling is being adjusted; and
- (c) Is located in the same building or in a similar building within the same housing accommodation or multi-building housing complex.

4207.5 A housing provider who so elects shall take and perfect a vacancy rent ceiling adjustment in the manner set forth in § 4204.10, and the date of perfection shall be the date on which the housing provider satisfies the notice requirements of § 4101.6.

4207.6 Where a housing provider increases the rent for a rental unit to an amount equal to or less than the rent ceiling adjustment permitted by § 4207.1, the housing provider shall comply with the provisions of §§ 4205.4 and 4205.5, and the notices required by §§ 4101.6 and 4205.4(a) may be issued simultaneously to the affected tenant on a form of notice approved by the Rent Administrator.

4208 RENT CEILING ADJUSTMENTS BY PETITION

4208.1 The rent ceiling for a rental unit shall not be adjusted under § 210 (capital improvement), § 211 (services and facilities), § 212 (hardship), § 214 (substantial rehabilitation), or § 215 (voluntary agreement) of the Act without the prior written approval of the Rent Administrator.

4208.2 A housing provider or group of tenants who seek a rent ceiling adjustment under any section of the Act referenced in § 4208.1 shall file a petition for rent ceiling adjustment with the Rent Administrator pursuant to § 3901.

- 4208.3 The Rent Administrator shall administratively consider and dispose of each petition for a rent ceiling adjustment pursuant to § 216 of the Act and chapters 39 and 40.
- 4208.4 The Rent Administrator shall, by written order served on the housing provider and affected tenants, grant in whole or in part of discuss each petition for a rent ceiling adjustment.
- 4208.5 A housing provider may take and perfect a rent ceiling adjustment pursuant to written order of the Rent Administrator in the manner set forth in § 4204.9 and the date of perfection of the rent ceiling adjustment shall be the date on which the housing provider satisfies the notice requirements of § 4101.6.
- 4208.6 Where a housing provider increases the rent for a rental unit to an amount equal to or less than the rent ceiling adjustments permitted by § 4208.1, the housing provider shall comply with the provisions of §§ 4205.4 and 4205.5, and the notices required by §§ 4101.6 and 4205.4(a) may be issued simultaneously to the affected tenant on a form of notice approved by the Rent Administrator.
- 4208.7 A housing provider or group of tenants may in one petition request a rent ceiling adjustment for more than one (1) or for all rental units in a housing accommodation; and may, with respect to a multi-building housing complex, in another petition request a rent ceiling adjustment for the entire complex.
- 4208.8 For purposes of this section, a multi-building housing complex is the aggregate of rental units located in two (2) or more physically contiguous buildings which share common ownership and management, and historically have been operated and treated for management and accounting purposes as a single business entity.
- 4208.9 The tenant of a rental unit whose rent ceiling is affected by a housing provider's petition filed under §§ 4209, 4210, 4211, or 4212 shall do the following:
- (a) Receive from the Rent Administrator adequate and timely notice of the following:
 - (1) The filing and pendency of the petition;
 - (2) The hearing or other administrative procedures for deciding the petition; and
 - (3) The tenant's right under the D.C. Administrative Procedure Act and § 216 of the Act to contest the housing provider's petition; and
 - (b) Contest or oppose the housing provider's petition in the hearing or other administrative procedure for deciding the petition.

4208.10 The tenant of a rental unit who receives notice of a petition under § 4208.9(a) and who fails to contest the housing provider's petition may not at a later date contest or challenge by tenant petition under § 4214 the order of the Rent Administrator on the housing provider's petition or any rent ceiling adjustment perfected by the housing provider pursuant to that order.

4209 PETITIONS BASED ON CLAIM OF HARDSHIP

4209.1 A housing provider who elects not to take and perfect a rent ceiling adjustment of general applicability under § 206(a) of the Act may petition the Rent Administrator once during each calendar year for a rent ceiling adjustment authorized by §§ 206(b) and 212 of the Act (a "hardship petition").

4209.2 A housing provider shall be eligible to file a hardship petition if either of the following requirements are met:

- (a) Nine (9) months have elapsed since the filing of any prior hardship petition under § 212 of the Act or prior rent control laws; or
- (b) Nine (9) months have elapsed since the implementation of any increase of general applicability under § 206(b) of the Act or prior rent control laws;

4209.3 The owner of property which has been determined to be abandoned or a continuing nuisance to the immediate surrounding area shall not be eligible to elect and file a hardship petition under §§ 206 and 212 of the Rental Housing Act of 1985 to abate the nuisance.

4209.4 A housing provider shall file a hardship petition on a form approved by the Rent Administrator and the financial information required to be submitted with a hardship petition shall be in the same form as the financial information requested on Form FP-308 of the D.C. Department of Finance and Revenue.

4209.5 The Hardship Petition Form shall contain instructions for computing the following:

- (a) The net income of the housing accommodation;
- (b) The housing provider's equity in the housing accommodation;
- (c) The rate of return the housing accommodation is yielding on the housing provider's equity;
- (d) The dollar amount of the rent increase which will be added to the rent ceiling of each registered rental unit in the housing accommodation; and
- (e) The rent ceiling(s) before and after the rent increase.

- 4209.6 When determining the net income of a housing accommodation, the following standards shall apply:
- (a) The maximum possible rental income for the twelve (12) consecutive month period shall be the aggregate of the rent ceilings for each rental unit during each month of the period, whether or not actually rented;
 - (b) In determining the management fee under operating expenses, whether in an owner-managed building or where management services have been provided under a contract with a management firm, the owner shall provide proof of management services provided and expenditures claimed; and
 - (c) In determining depreciation expenses as reflected in decreased real property tax assessments, a housing provider shall include the decreased assessments which are applicable to both the land and the improvements.
- 4209.7 When determining the housing provider's equity in a housing accommodation, the following standards shall apply:
- (a) Encumbrances that will reduce the assessed value shall include all mortgages, liens, and secured claims, whether incurred or directly related to the purchase, the capital improvement, or the substantial rehabilitation of the rental property; and
 - (b) The assessed value of a housing accommodation shall be the official assessment of the property by the D.C. Tax Assessor during the twelve (12) month reporting period, or a weighted average of the assessments (if there is more than one).
- 4209.8 A housing provider shall not include any of the following types of expenses as operating expenses on a hardship petition:
- (a) Membership fees in organizations established to influence legislation and regulation;
 - (b) Contributions to lobbying efforts;
 - (c) Contributions for legal fees in the prosecution of class action cases;
 - (d) Political contributions to candidates for office;
 - (e) Mortgage principal payments;

- (f) Maintenance expenses for which the housing provider has been reimbursed by any security deposit, insurance settlement, judgment for damages, agreed-upon payments, or any other method;
- (g) Attorney's fees charged for services connected with counseling litigation related to actions brought by the District of Columbia government due to the housing provider's repeated failure to comply with this Act or applicable housing regulations as evidence by violations issued by the Department of Consumer and Regulatory Affairs;
- (h) Any expenses for which the tenant has lawfully paid directly, and
- (i) Any court judgments relating to the operation of the rental property.

4209.9 The hardship petition form shall require a housing provider to list and value all current encumbrances and certify that the status of the property, as presented, is correct.

4209.10 A hearing examiner may require the housing provider to submit verification of the present status of encumbrances on the property.

4209.11 When adjudicating a hardship petition, the issues to be resolved may include the following:

- (a) The accuracy and verifiability of the income-expense data included on the hardship petition form;
- (b) The determination that the financial data represents the experience of the housing accommodation during a base period of any twelve (12) consecutive months within the fifteen (15) months preceding the date of filing of the petition;
- (c) The accuracy and verifiability of the financial information on the assessed value of the housing accommodation;
- (d) The accuracy of the calculations made by the housing provider in completing the hardship petition form;
- (e) The existence of a valid registration statement for the housing accommodation;
- (f) The determination of whether substantial violations for the housing regulations existed on the date the hardship petition was filed, or whether violations exist on the date of the petition hearing; and

- (g) Whether expenses for maintenance and repairs are ordinary, capital or extraordinary and whether they should be fully charged to the reporting period or depreciated for their useful life.

4209.12 When filing a hardship petition, the following shall apply:

- (a) A housing provider may elect to use either the accrual basis or the cash basis method of accounting;
- (b) The hearing examiner shall accept the housing provider's accounting method in determining the initial rate of return of a housing accommodation;
- (c) Once the election has been made, all subsequent hardship petitions for that housing accommodation shall be filed using the same method of accounting for income and expenses; and
- (d) The housing provider shall specifically petition the Rent Administrator to change the method of accounting for income and expenses used in any subsequent hardship petition. A change shall be allowed upon a finding that the different accounting method used for the petition being filed shall not materially distort, transfer, alter, or otherwise improperly state the income or expense data of the housing accommodation for the reporting period involved.

4209.13 Under the accrual method of accounting, income and expenses shall be recognized in the hardship petition when the unconditional legal right to receive or pay, vests.

4209.14 When a petition is filed using the accrual method of accounting, the Rent Administrator may require, as proof of accrued income or expense items, evidence of subsequent (after the reporting period) receipt of payment.

4209.15 For purposes of this section, the term "Uncollected rents", as defined § 103(37) of the Act and § 4502.1 shall not be allowed as an expense under the accrual method of accounting.

4209.16 Under the cash basis method of accounting, only those income items actually received or paid during the reporting period may be included in the petition; Provided, that expenses reported shall not exceed expenses for more than a twelve (12) month period.

4209.17 A housing provider shall provide to the hearing examiner, upon filing a hardship petition, underlying documents to substantiate the income and operating expense schedule of the housing accommodation. The documents shall include the following:

- (a) Copies of bills received for the accommodation during the twelve (12) month period;
- (b) Copies of cancelled checks and bank statements for the housing accommodation during the twelve (12) month period; and
- (c) Copies of ledgers, journals, or other internally generated records on the financial transactions of the housing accommodation during the twelve (12) month period.

4209.18 The Rent Administrator shall exclude the following expenses set forth in a Hardship Petition:

- (a) Expenses, whether accrued or paid, before or after the twelve (12) months;
- (b) Any expense prohibited in § 4209.7;
- (c) Any expense which, while charged to the subject housing accommodation, was actually incurred for another housing accommodation;
- (d) Any expense which cannot be verified by external financial documents listed in § 4209.16; and
- (e) Any expense for which substantial evidence supports a finding that the particular expense does not reflect actual events or experiences in the housing accommodation.

4209.19 At the time the hardship petition is filed, the housing provider shall provide the following:

- (a) One (1) copy of the petition for each rental unit in the housing accommodation, plus two (2) copies of the petition for the Rent Administrator;
- (b) Postage paid envelopes addressed to the tenant by name of each affected rental unit in the housing accommodation;
- (c) Copies of the certificate of occupancy and housing business license (where applicable), and proof of payment of the annual registration fee; and
- (d) A copy of the rent roll.

4209.20 Notwithstanding the provisions of chapters 39 and 40, the Rent Administrator shall administratively consider the dispose of each hardship petition according to the following procedures:

- (a) Promptly upon receipt of a properly executed and filed hardship petition, the Rent Administrator shall notify each tenant of a rental unit covered by the petition of the pendency of the petition, and of the procedures for disposing of the petition;
- (b) The notice to tenants required by a § 4209.19(a) shall inform the tenants of their right to designate within thirty (30) days a tenant representative pursuant to § 4005 to appear and act on their behalf in all matters regarding the petition, and to form a tenant organization for this purpose if none exists;
- (c) The notice to tenants shall further inform them of sources of technical assistance, and of the right of each tenant and the designated tenant representative to review or obtain a copy of the hardship petition including all supporting documentation at the office of the Rent Administrator;
- (d) The Rent Administrator shall consider and review the hardship petition and supporting documentation and, within twenty (20) days following the filing of the petition, shall issue and serve on the parties an audit report with recommendations regarding the acceptance or denial of expenditures and other financial claims and the final disposition of the hardship petition;
- (e) The Rent Administrator's audit report shall contain findings of fact and conclusions of law regarding the calculation of the amount of the rent ceiling adjustment, if any, to be recommended, and shall be based solely upon the hardship petition and the supporting documentation filed by the housing provider, but without a hearing;
- (f) Simultaneously with service of the audit report, the Rent Administrator shall notify each party as follows:
 - (1) That the party shall have thirty (30) days in which to file with the Rent Administrator and serve on all other parties, written exceptions and/or objections to specific findings, conclusions, and calculations of the audit reports;
 - (2) That in the absence of timely filed exceptions and/or objections, the audit report and recommendations shall become a final order forty-five (45) days after its issuance; and
 - (3) If exceptions or objections are filed, a hearing limited to the exceptions or objections shall be held within forty-five (45) days after issuance of the audit report;

- (g) All notices, petitions, pleadings and other documents required to be served on the designated tenant representative, if any, and if none has been designated, on each tenant individually, in pre-addressed, postage paid envelopes supplied by the housing provider;
- (h) Any hearing on a hardship petition required to be held by this section shall be held no later than ninety (90) days following the date of filing of the hardship petition, and the Rent Administrator's audit report and recommendation may after the hearing be deemed the "provisional finding" under § 212(c) of the Act for the purposes of authorizing a provisional rent ceiling adjustment; and
- (i) Except as modified by this section, the provisions of chapters 39 and 40 shall govern the disposition of hardship petitions.

4209.21 The amount of increase in the rent ceiling which a housing provider may take and perfect under § 212 of the Act shall be the amount required to provide a twelve percent (12%) rate of return computed according to § 212(b) of the Act.

4209.22 A housing provider may take and perfect a rent ceiling adjustment pursuant to a final order of the Rent Administrator on a hardship petition no sooner than twelve (12) months following the date of implementation of any prior rent ceiling adjustment of general applicability or rent ceiling adjustment based on a claim of hardship.

4210 PETITIONS BASED ON CAPITAL IMPROVEMENTS

4210.1 A housing provider may petition the Rent Administrator for a rent ceiling adjustment under § 210 of the Act in an amount sufficient to permit the housing provider to recover in increased rent the cost of a mandated capital improvement or capital improvements approved by the Rent Administrator (a "capital improvement petition").

4210.2 A housing provider shall file a capital improvement petition on a form approved by the Commission. The form shall be accompanied by instructions for completion of the form, which shall include notification to the affected tenants that the petition was filed and notification of the right to claim status as an elderly or disabled tenant.

4210.3 A housing provider shall file a capital improvement petition in advance of beginning the capital improvement, except in the following cases:

- (a) The capital improvement is immediately necessary to maintain the health or safety of the tenants; or
- (b) The capital improvement is required by the provisions of any federal or District law.

- 4210.4 If capital improvements are made in order to maintain the health and safety of the tenant, a housing provider shall file a capital improvement petition with the Rent Administrator within ten (10) calendar days after the installation of the improvement.
- 4210.5 If capital improvements are made as required by federal or District statute(s), the capital improvement petition may be filed as a certificate of calculation for mandated capital improvements on a form supplied by the Rent Administrator. The certificate shall be accepted without a hearing.
- 4210.6 Receipt and approval of the certificate of calculation by the Rent Administrator shall authorize the housing provider to implement the rent increase calculated on the mandated capital improvement petition form.
- 4210.7 A certificate of calculation for mandated capital improvements filed in support or in lieu of a capital improvement petition shall establish the following:
- (a) That the improvement is required by the provision of a federal or D.C. law which became effective after November 1, 1980;
 - (b) The amount of the cost of the improvements;
 - (c) That the required governmental permits and approvals have been secured. Copies of these permits or approvals shall be attached to the petition form; and
 - (d) That the improvements have actually been installed and are in operation.
- 4210.8 The Rent Administrator shall approve a capital improvement petition only if the Rent Administrator finds the following:
- (a) That the capital improvement would protect or enhance the health, safety, and security of the affected tenants, or the habitability of the rental unit(s) or housing accommodation;
 - (b) That the capital improvement is depreciable under the United States Internal Revenue Code;
 - (c) If applicable, that the capital improvement will result in a net reduction in the amount of energy used by the rental unit or costs are passed on to the tenants; and
 - (d) If improvements are being made to one (1) or more units within a housing accommodation, that the interests of the affected tenants are being protected.

- 4210.9 If a proposed capital improvement requires that the affected tenant vacate the rental unit(s) the housing provider shall serve notice to vacate for alterations or renovations, according to § 501(f) of the Act. No notice shall be served until after the Rent Administrator has approved the capital improvement petition.
- 4210.10 The Rent Administrator shall render a final decision on each capital improvement petition within sixty (60) days after the petition is filed with the Rent administrator pursuant to § 210(e)(2) of the Act; Provided, that a petition filed as a certificate of calculation for mandated capital improvements, pursuant to § 210(h) of the Act, shall be decided within thirty (30) days after it is filed with the Rent Administrator.
- 4210.11 If the Rent Administrator does not render a final decision on a completed capital improvement petition within sixty (60) days after receipt, the petitioner may proceed with the improvement subject to any rent adjustments subsequently ordered by the Rent Administrator pursuant to § 211(e)(2) of the Act.
- 4210.12 The amount of a rent ceiling increase which a housing provider may take and perfect pursuant to final order of the Rent Administrator on a capital improvement petition which affects an entire building or housing accommodation shall be the amount computed in the following manner:
- (a) By taking the total cost of the capital improvement excluding interest payments and service charges; THEN --
 - (b) By dividing the total monthly cost of the improvement by seventy-two (72) to obtain the total cost of the improvement to the entire building or housing accommodation; THEN --
 - (c) By dividing the total monthly cost of the improvement by the number of units in the building to obtain the dollar amount of the rent increase to each unit in the housing accommodation; Provided, that no increase may exceed the current rent ceiling by more than twenty percent (20%).
- 4210.13 The amount of rent ceiling increase which a housing provider may taken and perfect pursuant to final order of the Rent Administrator on a capital improvement petition which affects one or more but less than all rental units in a building or housing accommodation shall be the amount computed in the following manner:
- (a) By taking the total cost of the capital improvement excluding interest payments and service charges; THEN --
 - (b) By dividing the total cost of the improvement by forty-eight (48) to obtain the monthly cost of the improvements to all affected rental units; THEN --

- (c) By dividing the total monthly cost of the improvement by the number of rental units in the building to obtain the dollar amount of the rent increase to each affected rental unit in the housing accommodation: Provided, that no increase may exceed the current rent ceiling by more than fifteen percent (15%).

4210.14 A housing provider shall take and perfect a rent ceiling adjustment to recover the cost of capital improvements in the manner set forth in § 4204.10, and the date of perfection shall be the date on which the housing provider satisfies the notice requirements of § 4101.6.

4210.15 Where a housing provider increases the rent for a rental unit to an amount equal to or less than the rent ceiling adjustment permitted by § 4210.1, the housing provider shall comply with the provisions of §§ 4205.4 and 4205.5, and the notice required by §§ 4104.6 and 4205.4(a) may be issued simultaneously on a form of notice approved by the Rent Administrator.

4210.16 The purpose of §§ 4210.10 through 4210.44 shall be to implement the Rental Housing Act of 1985 Capital Improvements Amendment Act 1989, D.C. Law 8-48, effective Oct. 19, 1989 (the "Amendment Act").

4210.17 Subsections 4210.1 through 4210.11 shall apply to a capital improvement petition, whether or not the Amendment Act applies to the petition.

4210.18 A petition for a rent increase to recover the cost of a capital improvement filed on or before August 18, 1989, shall be decided under the prior law; all other pending petitions shall be decided under the Amendment Act and §§ 4210.16 through 4210.44 of this chapter unless the capital improvements were already made before October 19, 1989.

4210.19 The amount of a rent ceiling surcharge which a housing provider may take and perfect pursuant to the final order of the Rent Administrator on a capital improvement petition which affects an entire building or housing accommodation shall be the amount computed as set forth in this subsection. In computing the rent ceiling surcharge the housing provider shall do the following:

- (a) Determine the monthly payment required to amortize, over a calculation period of ninety-six (96) months, a loan in an amount equal to the total costs of the capital improvements, including service charges as defined in § 4210.40(b), and interest on the loan at the rate determined in accordance with § 4210.41; and
- (b) Divide the amount calculated in paragraph (a) by the number of rental units in the building or housing accommodation to obtain the dollar amount of the rent ceiling surcharge for each rental unit in the housing accommodation; Provided, that no rent ceiling surcharge may exceed twenty

percent (20%) of the rent ceiling of the rental unit in effect at the time the petition is filed.

- 4210.20 The ninety-six (96) month period referred to in § 4210.19(a) and the percentage referred to in § 4210.19(b) shall be solely applicable to the calculation of the monthly amount of the rent ceiling surcharge and are not to be factors in determining the permitted duration of a capital improvement rent ceiling surcharge or rent increase, which shall be determined on the basis of the actual recovery by the housing provider of all costs, including interest and service charges, of the capital improvements, in accordance with §§ 4210.23 through 4210.38.
- 4210.21 The amount of a rent ceiling surcharge which a housing provider may take and perfect pursuant to final order of the Rent Administrator on a capital improvement petition which effects one or more, but less than all, rental units in a building or housing accommodation shall be computed as set forth in this section. In computing the rent ceiling surcharge, the housing provider shall do the following:
- (a) Determine the monthly payment required to amortize, over a calculation period of sixty-four (64) months, a loan in an amount equal to the total costs of the capital improvements, including service charges as defined in § 4201.40 (b), including interest on the loan at the rate determined in accordance with on § 4210.41; and
 - (b) Divide the amount calculated in paragraph (a) by the number of rental units affected by the capital improvements to obtain the dollar amount of the rent ceiling surcharge for each affected rental unit in the housing accommodation; Provided, that no rent ceiling surcharge may exceed fifteen percent (15%) of the rent ceiling of the rental unit in effect at the time the petition is filed.
- 4210.22 The sixty-four (64) month period referred to in § 4210.21 (a) and the percentage referred to in § 4210.21(b) shall be solely applicable to the calculation of the monthly amount of the rent ceiling surcharge and shall not be factors in determining the permitted duration of a capital improvement rent ceiling surcharge or rent increase, which shall be determined on the basis of the actual recovery by the housing provider of all costs, including interest and service charges, of the capital improvement, in accordance with §§ 4210.23 through 4210.38.
- 4210.23 A housing provider shall take and perfect a rent ceiling surcharge to recover the costs of capital improvements, including interest and service charges, by filing an amended registration form in accordance with subsection § 4204.9 stating the amount of the surcharge for each rental unit. The date of perfection shall be the date on which the housing provider has filed the amended registration form with the Rent Administrator and posted or mailed it in accordance with § 4101.6.

- 4210.24 The rent ceiling surcharge that a housing provider may take and perfect pursuant to final order of the Rent Administrator on a capital improvement petition shall be a temporary surcharge only and shall permit the housing provider to increase the rent for a rental unit by a temporary capital improvement surcharge only until the housing provider has actually recovered, in collected rent, all costs, including interest and service charges, of the capital improvement.
- 4210.25 Capital improvement rent ceiling surcharges granted pursuant to the Amendment Act shall be excluded from the rent ceiling of a rental unit for purposes of calculating percentage increases in the rent ceiling.
- 4210.26 A capital improvement rent ceiling surcharge, while the surcharge remains in effect, shall be added to the rent ceiling of a rental unit for purposes of determining the maximum legal rent which may be charged for a rental unit.
- 4210.27 A capital improvement rent ceiling surcharge shall be in effect from the date of its perfection pursuant to § 4210.23 until the date on which the housing provider has actually recovered in collected rent all costs, including interest and service charges, of the capital improvement.
- 4210.28 Within thirty (30) days after the housing provider has actually recovered in collected rent all costs, including interest and service charges, of the capital improvement, the housing provider shall file with the Rent Administrator an amended registration form reflecting the following:
- (a) The abatement of the capital improvement rent ceiling surcharge computed by subtracting the dollar amount of the monthly capital improvement rent ceiling surcharge from the then existing monthly rent ceiling; and
 - (b) The re-computation and adjustment of the rent charged to reflect the abatement of the capital improvement rent surcharge computed by subtracting the dollar amount of the monthly capital improvement rent surcharge from the then existing rent charged.
- 4210.29 Failure to timely adjust the rent charged shall be a basis for the tenant or an association of tenants to file a tenant petition as set forth in § 4214.3 notwithstanding the provisions of § 4214.5.
- 4210.30 If, at the expiration of the ninety-six (96) month period described in § 4210.19(a) or the sixty-four (64) month period described in § 4210.22(a), as applicable, the housing provider has not actually recovered in collected rent all costs of the capital improvements, including interest and service charges, the housing provider shall be permitted to continue to collect the capital improvement rent surcharge.
- 4210.31 If the housing provider continues to collect the capital improvement surcharge, as provided in § 4210.30, then within thirty (30) days after the expiration of the nine-

ty-six (96) month period or sixty-four (64) month period, as applicable, the housing provider shall file with the Rent Administrator, and post in a conspicuous place in the common areas of the housing accommodation, and mail to each current tenant, on a form approved by the Rent Administrator, a Certificate of Continuation.

4210.32 The Certificate of Continuation shall be executed under oath and shall set forth the following:

- (a) The total costs, including interest and service charges of the capital improvements, which shall be based upon such costs, interest and service charges as have been approved by the Rent Administrator (including all interest payable on any loan approved by the Rent Administrator, the terms of such loan, including the interest rate set forth in the decision on the capital improvement petition, and any amendment to such decision);
- (b) The total amount of rental income actually received in collected rents by the housing provider as a result of the capital improvement surcharge which shall be equal to the difference between the following:
 - (1) The rental income actually received by the housing provider since the perfection of the capital improvement rent surcharge pursuant to §§ 4204.10 and 4101.6; and
 - (2) The maximum amount of the rental income the housing provider would have been entitled to receive under the Amendment Act during that same period if the capital improvement surcharge had not been in effect;
- (c) The amount of costs, interest and service charges remaining to be recovered by the housing provider; and
- (d) An estimate of the remaining number of months required in order for the housing provider to actually recover in collected rent the total costs, including interest and service charges, of the capital improvement.

4210.33 If the estimated number of months described in § 4210.32(d) and included in the Certificate of Continuation exceeds ten (10) months, the Certificate of Continuation filed pursuant to §§ 4210.31 through 4210.32 shall be subject to audit by the Rent Administrator in accordance with the procedures set forth in § 4209.18, except that the Rent Administrator shall issue a final Decision and Order on the Certificate of Continuation within sixty (60) days from the date on which a completed Certificate of Continuation shall be submitted.

- 4210.34 Whenever an audit is conducted, the Rent Administrator shall require the housing provider to provide the documentation as shall be necessary to verify the information set forth in the Certificate of Continuation.
- 4210.35 The capital improvement rent ceiling surcharge and rent surcharge shall continue pending the issuance of a final order on the Certificate of Continuation, subject, however, to the requirements of §§ 4210.28 through 4210.29.
- 4210.36 Any portion of the rent collected which is based on the capital improvement rent ceiling surcharge during the pendency of an audit of a Certificate of Continuation shall be subject to a full or partial refund to be made in full within sixty days (60) after the issuance of a decision of the Rent Administrator.
- 4210.37 Only a capital improvement rent ceiling surcharge which has actually been implemented as a capital improvement rent surcharge shall be counted in determining such recovery of costs, interest and service charges.
- 4210.38 If the housing accommodation is sold to a third party prior to recovery of all costs, interest and service charges, as to the successor owner the capital improvement rent ceiling surcharge and rent surcharge shall continue in effect until the successor has actually recovered in collected rent all costs, including interest and service charges, of the capital improvement incurred by the successor owner and the prior owner to the extent such costs, interest and service charges have not been actually recovered in collected rent.
- 4210.39 If a housing provider increases the rent for a rental unit to an amount that includes all or part of the capital improvement surcharge, the housing provider shall comply with the provisions of §§ 4205.4 and 4205.5, and the notice required by § 4205.4(a) may be issued on a form of notice approved by the Rent Administrator, which shall state the portion of the rent charge attributable to the capital improvement surcharge separately from the portion of the rent charge attributable to the rent ceiling.
- 4210.40 For purposes of §§ 4210.16 through 4210.44 the following terms shall have the meaning ascribed.
- (a) "Interest" shall mean all compensation paid by the housing provider to a lender for the use, forbearance or detention of money used to perform a capital improvement. A loan of such money used to perform a capital improvement need not be secured by the housing accommodation.
 - (b) "Service charges" shall include points, loan origination and loan processing fees, trustees fees, escrow set up fees, loan closing fees, charges and costs, title insurance fees, survey fees, lender's counsel fees, borrower's counsel fees, appraisal fees, environmental inspection fees, lender's inspection fees (however any of the foregoing may be designated or

described), and such other charges (other than interest) required by a lender in connection with a loan of money used to perform a capital improvement as to which the housing provider shall provide documentary information to the Rent Administrator. All such service charges shall be includable in a capital improvement petition and recoverable in collected rent by the housing provider.

4210.41 The amount of interest which shall be includable by a housing provider in a capital improvement petition for purposes of the calculation under § 4210.19(a) or § 4210.21(a), as applicable, shall be one of the following:

(a) The amount of interest payable by the housing provider at a fixed rate of interest on a loan of money used to perform the capital improvement or on that portion of a multi-purpose loan of money used to perform the capital improvement as documented by the housing provider by means of the relevant portion of a bona fide loan commitment or agreement with a lender, or by such other evidence of interest as shall be satisfactory to the Rent Administrator; or

(b) In the absence of any loan commitment, agreement or other evidence of interest, the amount of interest shall be calculated at a rate which shall be the following:

(1) A rate for seven (7) year United States Treasury constant maturities as published by the Federal Reserve Board in Publication H.15 (519) during the thirty (30) days immediately preceding the filing of the capital improvement petition; and

(2) Four percentage (4%) points (400 basis points).

4210.42 If the term of the loan obtained by the housing provider to pay for the capital improvement exceeds the calculation period for the rent ceiling surcharge in accordance with § 4210.19 or § 4210.21, the rent ceiling surcharge shall continue until the loan is fully discharged; Provided, that the provisions of § 4210.43 shall apply when the housing provider has recovered an amount equal to the sum of the following:

(a) The total costs of the capital improvements;

(b) The allowable service charges; and

(c) The interest payments made up to that time.

4210.43 The amount of the rent ceiling surcharge shall be reduced to equal the average monthly amount of the interest payments on the loan due during the next twelve

(12) months; thereafter, the surcharge shall be similarly adjusted at twelve (12) month intervals until the loan is paid in full.

4210.44 The housing provider shall file a Certificate of Continuation within thirty (30) days after the commencement of each twelve month period under §§ 4210.42 through 4210.44.

4210.45 In accordance with the provisions of § 206(f) and (g) of the Act, the provisions of § 4210.46 through § 4210.52 shall not apply to:

- (a) Any increase in the rent charged for a rental unit implemented prior to September 26, 1992 (the effective date of the Relief Act) pursuant to a capital improvement petition approved by the Rent Administrator.
- (b) An increase in the rent ceiling for a rental unit (regardless of when implemented) pursuant to a capital improvement petition for which a hearing was held or a decision was issued prior to the effective date of § 4210.45 through § 4210.52 of these regulations.

4210.46 Except in accordance with the procedures set forth in § 4210.51 of these rules:

- (a) a capital improvement increase in the rent charged shall not be assessed against a tenant found by the Rent Administrator to be an elderly tenant or disabled tenant, who leases and occupies a rental unit regulated under Title II of the Act.
- (b) a tenant found to be an elderly or disabled tenant by the Rent Administrator shall not be assessed an increase in the rent charged for an approved capital improvement notwithstanding the income of any other tenant or co-lessee of the unit.

4210.47 The procedures for an elderly or disabled tenant to claim exemption from payment of capital improvement rent ceiling increase shall be as follows:

- (a) If the increase in the rent charged is based on an approved capital improvement petition for which the notice of hearing was issued on or after the effective date of § 4210.45 through § 4210.52 of these rules, the elderly or disabled tenant, who claims the benefit of § 4210.46 shall:
 - (1) File with the Rent Administrator a claim of exemption in writing on a form approved by the Commission, within fifteen (15) days after receipt of the notice of hearing on the capital improvement petition;
 - (2) State on the form that the tenant is an elderly or disabled tenant, and submit any supporting documents that prove the tenant quali-

fies as an elderly or disabled tenant, as defined by § 4299.2 (a) and (b); and

- (3) Serve a copy of the claim and supporting documents on the housing provider named in the petition, or if the housing provider is represented, serve the housing provider's representative in accordance with § 3911.

- (b) The claim for status as an elderly or disabled tenant shall be determined as part of the hearing on the capital improvement petition.

4210.48

If the increase in the rent charged is based on a capital improvement petition for which the notice of hearing was issued before the effective date of § 4210.45 through 4210.52 of these rules, the elderly or disabled tenant must file in writing a claim for the benefit of § 4210.46 with the Rent Administrator stating that the tenant is an elderly or disabled tenant, on a form approved by the Rent Administrator with supporting documents showing that the tenant qualifies as an elderly or disabled tenant, and shall serve a copy of the claim and supporting documents on the housing provider, or if the housing provider is represented, serve the claim and supporting documents on the representative of the housing provider, in accordance with § 3911 of these rules. A claim must be filed within six (6) months after the effective date of § 4210.45 through 4210.52 of these rules. The procedures for such claims shall be as follows:

- (a) The housing provider must file with the Rent Administrator a written objection to the tenant's claim for status as an elderly or disabled tenant within ten (10) days after service of the claim and supporting documents by the tenant on the housing provider or the housing provider's representative.
- (b) If the housing provider files an objection, the Rent Administrator shall give notice to the tenant and housing provider of the date, time, and place of the hearing and conduct a hearing to determine whether the tenant is qualified as an elderly or disabled tenant. A claim shall be determined solely on the basis of the record of the hearing and may be adjudicated at the hearing on the capital improvement petition.
- (c) If no objection is filed by the housing provider, the Rent Administrator shall determine whether the tenant is qualified as an elderly or disabled tenant without holding a hearing, based solely on the claim and the supporting documents submitted by the tenant with the claim.
- (d) If the Rent Administrator denies the tenant's claim for status as an elderly or disabled tenant without a hearing, the tenant may challenge the denial by filing a tenant petition in accordance with § 216 (a) of the Act.

4210.49 No tenant shall qualify as an elderly or disabled tenant, unless found to be an elderly or disabled tenant by the Rent Administrator in accordance with § 4210.47 or § 4210.48; provided,

- (a) If a determination that a tenant qualified as an elderly or disabled tenant was made by the Rent Administrator without a hearing before the effective date of § 4210.45 through § 4210.52 of these rules, that determination shall remain in effect, unless the housing provider files an objection to the determination within six (6) months after the effective date of § 4210.45 through § 4210.52 of these rules.
- (b) If the housing provider does file an objection, the tenant's claim for status as an elderly or disabled tenant shall be determined in accordance with § 4210.48 (b) of these rules.
- (c) If a tenant becomes eligible to make a claim for exemption from a capital improvement rent charge increase, after the increase is in effect, the tenant may file a claim in writing with the Rent Administrator stating the change in circumstances and the basis on which the tenant claims eligibility for the exemption. The tenant must serve the housing provider or the housing provider's representative with a copy of the claim of exemption in accordance with § 3911. If the housing provider does not contest the tenant's claim of exemption, the Rent Administrator shall determine whether to grant the exemption. If the housing provider contests the exemption, the Rent Administrator shall schedule a hearing in accordance with the procedures in § 4000 through § 4010.

4210.50 A housing provider will be entitled to tax credits as follows:

- (a) A housing provider, who is not permitted under these rules and the Relief Act, to collect an increase in the rent charged from an elderly or disabled tenant for a capital improvement rent ceiling increase granted by the Rent Administrator, shall receive a tax credit against real property taxes on the housing accommodation, for each rental unit occupied by an elderly or disabled tenant in the rental housing accommodation.
- (b) The amount of the tax credit for each rental unit shall be in the amount per month of \$ 1.00 for each \$ 1.00 of capital improvement rent ceiling increase per month per unit granted by the Rent Administrator and not implemented as rent charged the elderly or disabled tenant by the housing provider.
- (c) The tax credit shall commence on the date the Rent Administrator grants the capital improvement petition and the tax credit shall continue until the first of the following to occur:

- (1) the expiration of the capital improvement rent ceiling increase pursuant to § 4210.27 of these rules, or
- (2) the cessation of occupancy of the rental unit by the elderly or disabled tenant, unless the next occupant of the rental unit is an elderly or disabled tenant, as defined by § 4299.2(a) or (b), and as certified to the Rent Administrator, under oath, by the housing provider and the elderly or disabled tenant, or as found by the Rent Administrator after a hearing; or
- (3) the elderly or disabled tenant becomes ineligible for an exemption from a capital improvement increase, because of a change of income or improvement in health.

(d) The tenant has the duty to notify the housing provider within fifteen (15) days from the date of the change of income or health. The housing provider shall then serve on the tenant a 30 day notice of rent increase based on the capital improvement.

(e) The tax credit shall be taken against the next and each succeeding installment or installments of real property taxes payable to the District of Columbia for the housing accommodation, including the land on which it is located.

(f) If the finding by the Rent Administrator that a tenant is an elderly or disabled tenant is reversed on appeal, no interest or penalty on the real property tax shall apply to the period prior to that date.

4210.51

(a) As part of the hearing under § 4210.47 or § 4210.48, the housing provider may request the Rent Administrator to permit the housing provider to implement increases in the rents charged for capital improvements to elderly or disabled tenants of the housing accommodation.

(b) The Rent Administrator shall approve the request, if the housing provider proves to the satisfaction of the Rent Administrator in a hearing that the failure to implement the entire capital improvement rent ceiling increase as rents charged on rental units occupied by elderly or disabled tenants would exceed the aggregate amount of the real property taxes, payable for the housing accommodation for the calendar year.

(c) For purposes of making the calculation in § 4210.50(b) to determine the aggregate amount that would exceed the amount of real property taxes due in a calendar year, the prohibition in § 4210.46 against imposing increases in the rents charged for capital improvements to elderly or disabled tenants, and the provisions of § 4210.50 providing for a tax credit, shall be disregarded.

- (d) The Rent Administrator shall render a written decision on the request by the housing provider to implement an approved capital improvement as rent charged on the unit occupied by a qualified elderly or disabled tenant.

4210.52 Any person who knowingly, willfully, and in bad faith makes a false or fraudulent statement to receive a tax credit for not assessing a capital improvement increase to an elderly or disabled tenant shall be subject to a fine of not more than \$ 5,000.00 for each violation.

4211 PETITIONS FOR CHANGES IN RELATED SERVICES OR FACILITIES

4211.1 A housing provider who has changed or proposes to change the related services or facilities at a rental unit or housing accommodation may petition the Rent Administrator for a rent ceiling adjustment under § 211 of the Act (a "related services or facilities petition") to reflect the monetary value of the change.

4211.2 The Rent Administrator shall approve related services or related facilities petition only if the Rent Administrator finds the following:

- (a) The change shall not adversely affect the health, safety, and security of the tenants;
- (b) The change shall not directly result in a substantial violation of the Housing Code;
- (c) The change shall not be retaliatory, as defined in § 502 of the Act; and
- (d) The change shall not be intended to cause displacement of tenants from the housing accommodation.

4211.3 A housing provider shall file related services or facilities petition on a form approved by the Rent Administrator which shall include the following information:

- (a) The address of the housing accommodation;
- (b) The housing provider's registration number;
- (c) A brief description of the changes in related services or facilities;
- (d) An estimate of the value of any increase in related services or facilities;
- (e) An estimate of the value to the tenants of any decrease in related services or facilities;
- (f) A statement giving the reason for changing the related services or facilities;

- (g) The rent ceiling(s) at the time the petition is filed; and
- (h) The proposed rent ceiling(s) which would reflect the change in the related services or facilities.

4211.4 A housing provider may increase related services or facilities at a rental unit or housing accommodation, but shall not take and perfect a commensurate rent ceiling adjustment or rent increase without the prior approval of the Rent Administrator.

4211.5 A housing provider shall not change substantially related services or facilities in violation of § 4211.2 or decrease substantially related services or facilities at a rental unit or housing accommodation without the prior approval of the Rent Administrator.

4211.6 If related services or facilities at a rental unit or housing accommodation decrease by accident, inadvertence or neglect by the housing provider and are not promptly restored to the previous level, the housing provider shall promptly reduce the rent for the rental unit or housing accommodation by an amount which reflects the monthly value of the decrease in related services or facilities.

4211.7 The Rent Administrator on his or her own motion or by tenant petition may review and adjust a rent decrease implemented under § 4211.6, and a housing provider who fails to promptly and adequately reduce rent under § 4211.6 may be liable for additional penalties under the Act.

4211.8 The amount of a rent ceiling adjustment which a housing provider may take and implement or may be required to take and implement pursuant to a final order of the Rent Administrator on a related services or facilities petition shall not include or reflect the cost to the housing provider of any capital improvements, but shall include only the monthly value of the change in related services or facilities, as determined by the Rent Administrator.

4211.9 To determine the monthly value of changes in related services or facilities, the Rent Administrator may consider the following:

- (a) The cost to the tenant of obtaining alternate related services or facilities comparable to those reduced by the housing provider;
- (b) The operating cost to the housing provider of the related services or facilities which are changed; or
- (c) The fair market value of comparable related services or facilities.

4211.10 A housing provider shall take and perfect a rent ceiling adjustment pursuant to final order of the Rent Administrator on related services or facilities petition in

the manner set forth in § 4204.10, and the date of perfection shall be the date on which the housing provider satisfies the notice requirements of § 4101.6; Provided, that a housing provider shall not take and perfect any rent ceiling increase under this section prior to the date on which the increased related services or facilities are actually provided or available to the tenant or tenants of the rental unit or housing accommodation.

4211.11 Where a housing provider increases the rent for a rental unit to an amount equal to or less than the rent ceiling adjustment permitted by § 4211.1, the housing provider shall comply with the provisions of §§ 4205.4 and 4205.5, and the notices required by §§ 4101.6 and 4205.4(a) may be issued simultaneously to the affected tenant on a form of notice approved by the Rent Administrator.

4212 PETITIONS FOR SUBSTANTIAL REHABILITATION

4212.1 A housing provider who proposes to substantially rehabilitate a rental unit or housing accommodation may petition the Rent Administrator for an increase in the rent ceiling for the rental unit or housing accommodation under § 214 of the Act (a "substantial rehabilitation petition").

4212.2 A housing provider shall file a substantial rehabilitation petition on a form prescribed by the Rent Administrator and shall include with the petition the following information:

- (a) Detailed plans, specifications and projected cost of the proposed rehabilitation;
- (b) Documentation of the assessed value of the housing accommodation as determined by the D.C. Department of Finance and Revenue for real estate taxation purposes for the tax year beginning no later than sixty (60) days after the date on which the petition is filed; and
- (c) A schedule showing all rental units in the housing accommodation to be rehabilitated showing whether the rental unit is vacant or occupied and, if vacant, the date and cause of its vacation.

4212.3 A housing provider shall not begin the rehabilitation of any rental unit or housing accommodation or seek to evict a tenant in order to rehabilitate a rental unit without the prior approval of the Rent Administrator.

4212.4 The Rent Administrator shall consider and dispose of each substantial rehabilitation petition within sixty (60) days of the date on which the petition is filed.

4212.5 The Rent Administrator shall grant a substantial rehabilitation petition without a hearing if the Rent Administrator finds the following;

- (a) That each rental unit for which a rent ceiling adjustment is sought is va-

cant;

- (b) That no rental unit in subsection (a) was vacated in violation of §§ 501 or 502 of the Act; and
- (c) That the cost of the proposed substantial rehabilitation exceeds fifty percent (50%) of the assessed value of the rental unit or housing accommodation; Provided, that the assessed value of a rental unit shall be that portion of the assessed value of the housing accommodation calculated by multiplying the assessed value of the housing accommodation calculated by a fraction whose numerator is the square footage of the rental unit and whose denominator is the total square footage of the housing accommodation including all common elements.

4212.6 If any rental unit for which a rent ceiling adjustment is requested under this section is occupied, the Rent Administrator shall consider and dispose of the petition pursuant to the hearing provisions of chapters 39 and 40.

4212.7 A housing provider who has filed a petition under this section affecting an occupied rental unit shall promptly serve on the tenant of the occupied unit a notice of intent to substantially rehabilitate the rental unit or housing accommodation in which it is located which shall state at least the following:

- (a) That a petition to allow substantial rehabilitation has been filed with the Rent Administrator who will review the petition;
- (b) That no work that will displace or inconvenience tenants, and no work in any occupied apartment, without a tenant's permission, will begin for at least one hundred twenty (120) days;
- (c) Whether the tenants will be required to vacate in order to perform the work necessary for the substantial rehabilitation, if it is approved;
- (d) If the tenants shall be required to vacate for completion of the proposed rehabilitation, that the notice is the one hundred twenty (120) day notice to vacate required by § 501(f) of the Act;
- (e) That upon completion of substantial rehabilitation the tenants have the right to re-rent their former rental units at the newly authorized rent ceiling; and
- (f) That the tenants are entitled to relocation assistance as provided in Title VII of the Act if they are required to vacate in order for the necessary work to be done. Where the tenants shall be required to vacate if the petition is approved, the initial notice shall contain the language set forth in § 501 of the Act.

- 4212.8 The Rent Administrator shall grant a substantial rehabilitation petition affecting an occupied rental unit only if the Rent Administrator finds the following:
- (a) That the proposed rehabilitation is in the interest of the tenant of the rental unit;
 - (b) That the cost of the proposed rehabilitation equals or exceeds fifty percent (50%) of the assessed value of the rental unit or housing accommodation as determined under § 4212.5(c); and
 - (c) That the building permit for the proposed rehabilitation was issued after January 31, 1973.
- 4212.9 To determine whether a proposed substantial rehabilitation is in the interest of the tenant, The Rent Administrator may consider the following:
- (a) The existing physical condition of the rental unit or housing accommodation as shown by reports or testimony of D.C. housing inspectors, licensed engineers, architects and contractors, or other qualified experts;
 - (b) Whether the existing physical condition impairs or tends to impair the health, safety or welfare of any tenant;
 - (c) Whether the existing physical conditions can be corrected by improved maintenance, repair or capital improvement; and
 - (d) The impact of the proposed rehabilitation on the tenant or tenants in terms of proposed financial cost, inconvenience or relocation.
- 4212.10 The amount of a rent ceiling increase which a housing provider may take and implement pursuant to a final order of the Rent Administrator on a substantial rehabilitation petition shall be as follows:
- (a) The amount which authorizes rent increases sufficient to repay a loan in the principal amount of the cost of the approved rehabilitation over the amortization period and at the rate of interest documented by the housing provider in a bona fide loan commitment agreement with a lender; or
 - (b) In the absence of a loan commitment agreement, over an amortization period of two hundred forty (240) months at the rate of interest equal to two (2) points above the average monthly bank prime loan rate established by the Federal Reserve Board in Publication H-15, Selected Interest Rates, for the week in which the substantial rehabilitation petition is filed; Provided, that the amount of the rent ceiling shall not exceed one hundred twenty-five percent (125%) of the rent ceiling at the time the petition is

filed.

4212.11 A housing provider shall take and perfect a rent ceiling adjustment pursuant to final order of the Rent Administrator on a substantial rehabilitation petition in the manner set forth in § 4204.10, and the date of perfection of the rent ceiling adjustment shall be the date on which the housing provider satisfies the notice requirements of 4101.6; Provided, that a housing provider shall not take and implement a rent ceiling increase under this section until the approved substantial rehabilitation has been completed.

4212.12 Where a housing provider increases the rent for a rental unit to an amount equal to or less than the rent ceiling adjustment permitted by § 4212.1, the housing provider shall comply with the provisions of §§ 4205.4 and 4205.5, and the notices required by §§ 4101.6 and 4205.4(a) may be issued simultaneously on a form of notice approved by the Rent Administrator.

4213 RENT CEILING ADJUSTMENTS BY VOLUNTARY AGREEMENT

4213.1 Tenants and housing providers may enter into voluntary agreements pursuant to § 215 of the Act, for the following purposes:

- (a) To establish rent ceilings;
- (b) To change related services or facilities; or
- (c) To provide for capital improvements and ordinary maintenance and repairs.

4213.2 Either a housing provider or the tenant of a housing accommodation may initiate a voluntary agreement.

4213.3 If a housing provider initiates a voluntary agreement, the housing provider shall distribute a copy of the proposed agreement to each tenant accompanied by a written notice that describes in detail the proposed rent ceilings that would be established, the proposed changes in related services or facilities, and the proposed capital improvements and ordinary maintenance and repairs.

4213.4 Each tenant shall be permitted a minimum of fourteen (14) days to consider the proposal, confer with other tenants, and respond to the housing provider.

4213.5 If the proposed voluntary agreement is initiated by one (1) or more tenants or a tenant association, the tenants shall serve on the housing provider a notice and schedule as required by § 4213.1, and the housing provider shall have a minimum of fourteen (14) days after receipt to consider the proposal and to respond to the tenants.

- 4213.6 All notices and responses shall be in writing with a copy forwarded to the Rent Administrator. A notice shall contain the name, address, and telephone number of the person(s) to whom the response shall be directed and shall be accompanied by a copy of § 4213.
- 4213.7 A response may include counter-proposals for proposed rent ceilings, related services or facilities, and any other conditions incident to a voluntary agreement.
- 4213.8 Housing providers and tenants are encouraged to enter into face-to-face negotiations.
- 4213.9 If the parties involved in negotiating a voluntary agreement find there are difficulties and obstacles to the negotiations, but are desirous of achieving a successful agreement, any party may seek the assistance of the Conciliation Service of the RACD, as established under § 503 of the Act.
- 4213.10 Before the execution of a voluntary agreement by a housing provider and at least seventy percent (70%) of the tenants who reside in the housing accommodation, a copy of the final proposed agreement shall be distributed to each tenant eligible to sign.
- 4213.11 A proposed voluntary agreement shall contain at least the following:
- (a) The current and proposed rent ceilings and rent for each rental unit and the amount of the proposed rent change on both;
 - (b) The current and proposed levels of related services or facilities under the agreement;
 - (c) All other conditions (including specific repairs to be made) by which the housing provider agrees to be bound;
 - (d) All other conditions by which the tenants agree to be bound;
 - (e) A statement that the agreement is voluntary and that no form of coercion was imposed by the housing provider or any tenant in securing the signatures of the tenants; and
 - (f) A listing of all tenants in the housing accommodation by name and rental unit numbers or identifying letters, a space for each tenant's signature and telephone number, and a space for each tenant to approve or disapprove the agreement.
- 4213.12 Tenants who are employees of the housing provider shall be identified as employees on the agreement and their signatures shall not be counted in determining whether seventy percent (70%) of the tenants approve the agreement.

- 4213.13 When a voluntary agreement has been approved by seventy percent (70%) of the tenants in a housing accommodation and the housing provider, the Rent Administrator shall approve the voluntary agreement within forty-five (45) days of its submission; Provided, that the Rent Administrator shall provide a reasonable opportunity for tenants with objections to submit the objections in writing.
- 4213.14 If the Rent does not approve or disapprove the voluntary agreement within the time limit of § 4213.13, the voluntary agreement shall be deemed approved.
- 4213.15 A written copy of the Rent Administrator's determination shall be mailed to the housing provider and to each tenant of the housing accommodation.
- 4213.16 If the Rent Administrator certifies approval of a voluntary agreement, the approval shall inform all parties of the following:
- (a) The new rent ceilings;
 - (b) Any new levels of related services or facilities; and
 - (c) All other terms of the agreement.
- 4213.17 Voluntary agreements approved by the Rent Administrator shall be binding on the housing provider and on all tenants of the housing accommodation, including those tenants who did not sign the agreement.
- 4213.18 If the Rent Administrator, pursuant to § 4213.13, determines that there is substantial evidence that credible grounds for disapproval are present, a hearing shall be conducted so that the parties can present testimony and documentary evidence in support of or in response to the grounds determined by the Rent Administrator.
- 4213.19 The Rent Administrator may disapprove a voluntary agreement which has been approved by seventy percent (70%) of the tenants only in the following circumstances:
- (a) If all or part of the tenant approval has been induced by duress, harassment, intimidation or coercion;
 - (b) If all or part of the tenant approval has been induced by fraud, deceit or misrepresentation of material facts; or
 - (c) If the voluntary agreement contradicts the provisions of § 102 of the Act or results in inequitable treatment of the tenants.
- 4213.20 Where a housing provider increases the rent for a rental unit to an amount equal to or less than the rent ceiling adjustment permitted by § 4213.1, the housing provid-

er shall comply with the provisions of §§ 4205.4 and 4205.5, and the notices required by §§ 4101.6 and 4205.4(a) may be issued simultaneously to the affected tenant on a form of notice approved by the Rent Administrator.

4213.21 A notice of rent increase shall not be served on any tenant of the housing accommodation prior to the receipt of the Rent Administrator's approval of the voluntary agreement or to the expiration of the limit in §§ 4213.13 and 4213.14.

4214 TENANT PETITIONS

4214.1 The tenant of a rental unit or an association of tenants of a housing accommodation may, by petition filed with the Rent Administrator, challenge or contest the following:

- (a) The base rent for a rental unit or housing accommodation established under § 4201; Provided, that the base rent challenge shall be filed in the manner and within the time set forth in § 4215;
- (b) The initial rent ceiling for the rental unit or housing accommodation established under § 4202 upon termination of exclusion from coverage by the Act; or
- (c) The initial rent ceiling for the rental unit or housing accommodation established under § 4203 upon termination of exemption from coverage of the Rent Stabilization Program.

4214.2 The tenant of a rental unit or an association of tenants of a housing accommodation may, by a petition filed with the Rent Administrator, challenge or contest any rent ceiling adjustment taken and perfected by a housing provider in the following circumstances:

- (a) Under § 206(b) of the Act (adjustment of general applicability);
- (b) Under § 213 of the Act (vacancy adjustment);
 - (1) If the adjustment under § 213(a)(1) of the Act was perfected sooner than twelve (12) months following any prior similar adjustment; or
 - (2) If the adjustment under § 213(a)(2) of the Act was perfected based upon a comparable rental unit which failed to meet the criteria of § 4207.4;
- (c) Under § 215 of the Act (adjustment by voluntary agreement) if the voluntary agreement was coerced or established in violation of § 4213;
- (d) Under § 212 of the Act (hardship petition) if the adjustment was perfected

sooner than twelve (12) months following a previous adjustment of general applicability or hardship adjustment; or

- (e) Under any section of the Act or pursuant to an order of the Rent Administrator or Commission if the adjustment was greater than permitted by the Act or order.

4214.3 The tenant of a rental unit or an association of tenants of a housing accommodation may, by petition filed with the Rent Administrator, challenge or contest any rent or rent increase for the rental unit which is as follows:

- (a) In violation of a lease agreement for the rent unit;
- (b) Greater than the rent ceiling for the rental unit authorized by the Act or order of the Rent Administrator or Commission;
- (c) Implemented sooner than one hundred eight (180) days following any previous rent increase for the rental unit;
- (d) Implemented sooner than thirty (30) days following written notice of the rent increase, or upon any notice which fails to comply with § 904 of the Act;
- (e) Implemented when the rental unit or the common elements of the housing accommodations are not in substantial compliance with the housing regulations, and the absence of such substantial compliance is not caused by the neglect or misconduct of the tenant; or
- (f) Implemented when the rental unit or housing accommodation is registered under the Act, or the housing provider does not have a housing business license if required, or if the manager of the rental unit or housing accommodation is not properly registered if registration is required by this title.

4214.4 The tenant of a rental unit or an association of tenants of a housing accommodation may, by petition filed with the Rent Administrator, complain of and request appropriate relief for any other violation of the Act, including but not limited to, the following:

- (a) Any violation of the notice requirements of § 501 of the Act, including but not limited to, allegations of the following:
 - (1) That the notice does not contain a statement detailing the reasons for and the appropriate time period within which the tenant shall either vacate or correct;
 - (2) That the notice is given for a rental unit that is subject to registra-

tion and is not properly registered;

- (3) That the notice fails to state that a claim of exemption is on file with the Rent Administrator, if applicable;
 - (4) That the notice fails to inform the tenant of the right to relocation assistance pursuant to § 701 of the Act, if applicable; and
 - (5) That the notice fails to inform the tenant of the right to re-rent the rental unit, if applicable;
- (b) Any proposed retaliatory eviction or other retaliatory act in violation of § 502 of the Act;
 - (c) Any demand for a security deposit in violation of § 217 of the Act;
 - (d) Any unauthorized reduction in services or facilities related to the rental unit not permitted by the Act or authorized by order of the Rent Administrator;
 - (e) Any condition of the rental unit or housing accommodation which constitutes a substantial or prolonged violation of the housing regulations;
 - (f) Any failure to adequately serve notice on the tenant of a proposed rent ceiling adjustment or hearing on a proposed rent ceiling adjustment for the rental unit or housing accommodation required by the Act, the D.C. Administrative Procedures Act or § 4208.9.

4214.5 Except as set forth in §§ 4214.2(d) and (e), a tenant of a rental unit may not challenge or contest, by petition filed with the Rent Administrator, any rent ceiling adjustment perfected by a housing provider pursuant to final order of the Rent Administrator for a capital improvement petition, for a related services or facilities petition, for a hardship petition, or for a substantial rehabilitation petition, if the tenant is as follows:

- (a) Was not a tenant of the affected rental unit prior to the date of perfection of the rent ceiling adjustment; or
- (b) Was a tenant of the affected rental unit prior to the date of perfection and received notice of the housing provider's petition but failed to oppose the petition as permitted by § 4208.9.

4214.6 The tenant of a rental unit or association of tenants of a housing accommodation shall file a petition under this section which meets the requirements of § 4208 and shall include the following:

- (a) Proof of tenancy by rent receipt, cancelled check, or copy of lease agreement;
- (b) A copy of a notice to quit, if applicable; and
- (c) A copy of any other notice or document applicable to the petition.

4214.7 In adjudicating a tenant petition which alleges an unauthorized reduction in related services or facilities under § 4214.4(d) or substantial and prolonged housing code violations under § 4214.4(e), the Rent Administrator shall make a finding of the monetary value to the tenant of the reduction in related services or facilities or of the housing code violations, and may dismiss any such tenant petition if the tenant fails to allege and support with competent evidence the monetary value claimed.

4214.8 Except as provided in § 4215 for base rent challenges, a tenant petition filed under this section shall be filed within three (3) years of the effective date of the adjustment.

4215 TENANT PETITIONS TO CHALLENGE BASE RENT

4215.1 A tenant petition to challenge the base rent for a rental unit established by a housing provider under § 103(4) of the Act and § 4201, which shall be filed by the tenant of the rental unit with the Rent Administrator in duplicate copies on a base rent challenge form approved by the Rent Administrator.

4215.2 The tenant of a rental unit shall file a base rent challenge not later than six (6) months following the date of registration of the unit under § 4101, which shall be the date on which the housing provider meets the notice requirements of § 4101.3.

4215.3 Copies of all documents or other evidence in support of the base rent challenge shall be attached to the form at the time it is filed with the Rent Administrator.

4215.4 Upon receipt of a properly executed and timely filed base rent challenge, the Rent Administrator shall serve a copy on the housing provider of the rental unit in accordance with § 3911.

4215.5 When adjudicating a base rent challenge, the issues to be determined by the Rent Administrator are limited to the following:

- (a) Whether the housing provider's registration contains the actual rent charged for the unit of September 1, 1983;
- (b) Whether the rent claimed as the September 1, 1983 rent was the rent on that date;
- (c) Whether the calculation of base rent complies with § 4201;

- (d) Whether the housing provider's registration statement accurately states the related services or facilities provided to the rental unit or housing accommodation on September 1, 1983; and
- (e) Whether the rent for the rental unit on the effective date of the Act was higher than the base rent.

4215.6 Notwithstanding the provisions of § 3903 the Rent Administrator may resolve a base rent challenge without a hearing.

4215.7 In arriving at a proposed order disposing of a base rent challenge, the Rent Administrator shall base his or her decision on documentary evidence contained in the records of the RACD and other divisions within the Department of Consumer and Regulatory Affairs.

4215.8 The Rent Administrator shall provide a copy of the proposed determination of a base rent challenge to the tenant(s) and the housing provider in accordance with § 3911.

4215.9 Where parties to a base rent challenge disagree with the proposed order of the Rent Administrator, they may file objections and exceptions with the Rent Administrator within twenty (20) days of the receipt of the proposed order.

4215.10 Parties filing objections and exceptions in accordance with § 4212.9 shall do the following:

- (a) Describe their reasons for disagreement with the proposed order;
- (b) Describe any typographical, numerical or technical errors on the proposed order; or
- (c) Describe the findings and conclusions which the party believes should have been made and the evidence which supports these findings and conclusions.

4215.11 Upon consideration of objections and exceptions to a proposed order, the Rent Administrator may issue a final order or may direct that a hearing be held to resolve any disputed issues of fact.

4215.12 If no objections and exceptions are received in accordance with § 4215.9, the Rent Administrator shall notify the parties that the proposed order has become final and the final order shall contain notice of the right to appeal pursuant to § 3802.

4216 PETITIONS ALLEGING SUBSTANTIAL HOUSING CODE VIOLA-

TIONS

- 4216.1 Each petition for a rent ceiling adjustment under § 207 of the Act and §§ 4209, 4210, 4211, and 4212 shall be considered a petition to increase rent, and the Rent Administrator may consider whether the rental unit and common elements of the housing accommodation are in substantial compliance with the housing code.
- 4216.2 For purposes of this subtitle, "substantial compliance with the housing code" means the absence of any substantial housing violations as defined in § 103(35) of the Act, including but not limited to, the following:
- (a) Frequent lack of sufficient water supply;
 - (b) Frequent lack of hot water;
 - (c) Frequent lack of sufficient heat;
 - (d) Curtailment of utility service, such as gas or electricity;
 - (e) Defective electrical wiring, outlets, or fixtures;
 - (f) Exposed electrical wiring or outlets not properly covered;
 - (g) Leaks in the roof or walls;
 - (h) Defective drains, sewage system, or toilet facilities;
 - (i) Infestation of insects or rodents;
 - (j) Lead paint on the interior of the dwelling, or on the exterior of the dwelling where the paint is in a location or in a condition which creates a hazard of lead poisoning to children or the occupants;
 - (k) Insufficient number of acceptable exits for a dwelling, or from each floor of a rooming house;
 - (l) Obstructed exits;
 - (m) Accumulation of garbage or rubbish in common areas;
 - (n) Plaster falling or in immediate danger of falling;
 - (o) Dangerous porches, stairs, or railings;
 - (p) Floor, wall, or ceilings with substantial holes;
 - (q) Doors or windows which are not sufficiently tight to maintain the required

temperature or to prevent excessive heat loss;

- (r) Doors lacking required locks;
- (s) Fire hazards or absence of required fire prevention or fire control;
- (t) Inadequate ventilation of interior bathrooms; and
- (u) Large number of housing code violations, each of which may be either substantial or non-substantial, the aggregate of which is substantial, because of the number of violations.

4216.3 In a hearing on a housing provider's petition for a rent ceiling adjustment, there shall be a rebuttable presumption of substantial compliance with the housing regulations for each rental unit and the common elements of a housing accommodation, if the following applies:

- (a) The housing accommodation was last inspected for housing code violations more than thirty (30) days prior to the date of filing of the petition for adjustment, and all substantial violations then cited have been abated within the time set forth in the notice of violations; or
- (b) The housing accommodation shall have been inspected at the housing provider's request within thirty (30) days immediately preceding the date of filing of the petition for adjustment.

4216.4 For the purposes of § 4216.3(a), the Rent Administrator shall find abatement of all substantial housing code violations upon certification of abatement by the housing inspector, or the affected tenant, or the housing provider; Provided, that upon that certification of abatement by the housing provider the affected tenant has been given ten (10) days notice of and opportunity to contest the certification.

4216.5 Evidence of substantial violations of the housing code may be presented to a hearing examiner by the testimony of parties, except that no tenant complaints of substantial violations shall be received in evidence in any hearing if the conditions giving rise to the complaint occurred and were abated more than twelve (12) months previously.

4216.6 Tenant testimony may be supported by photographs or other documentary evidence, written Department of Consumer and Regulatory Affairs violation notice(s), or the testimony of a Department of Consumer and Regulatory Affairs official who has personally inspected the rental property.

4216.7 Testimony shall be as detailed as necessary so that the hearing examiner can make findings of fact that will identify the specific violation(s), their location and dura-

tion, and whether they have been abated. Based upon such testimony, the examiner shall determine if the violations are substantial.

4216.8 A finding of excessive and prolonged housing code violations pursuant to § 208(a)(2) of the Act shall identify each violation, its location and duration, and whether or not it has been abated.

4217 ENFORCEMENT AND PENALTIES

4217.1 Where it has been determined that a housing provider knowingly demanded or received rent above the rent ceiling for a particular rental unit, or has substantially reduced or eliminated services previously provided, the Rent Administrator or the Commission shall invoke any or all of the following types of relief:

- (a) A rent refund; and
- (b) Treble the amount of the rent refund ordered paid; or
- (c) A rent rollback for a specific period or until specific conditions are complied with.

4217.2 Rent refunds under § 4217.1 shall be trebled only where detailed findings of fact are made that the housing provider acted in bad faith.

4217.3 When the Rent Administrator imposes a rent refund or treble that amount under § 901 of the Act, interest shall be calculated on the rent refund or treble amount accordance with § 3826 of these rules.

4217.4 Where it has been determined that any person has willfully committed any act specified in §§ 901(b) and (e) of the Act, both the Rent Administrator and the Commission are authorized to refer the matter to the Corporation Counsel of the District of Columbia for criminal prosecution.

4217.5 Where a party has failed to comply with an order in a final decision of the Rent Administrator or the Commission, the Rent Administrator, the Commission, or any adversely affected tenant or housing provider are authorized to refer the matter to the Superior Court of the District of Columbia for civil enforcement under § 218 of the Act.

4217.6 [Reserved]

4217.7 [Reserved]

4217.8 [Reserved]

4217.9 [Reserved]

4217.10 Appeals of fines imposed in accordance with § 901(f) of the Act and § 4217.9 shall be reviewed in accordance with § 301 of the DCRA Civil Infractions Act of 1985 and §§ 202(a)(2) and 219 of the Rental Housing Act of 1985.

4218 CERTIFICATE OF ASSURANCE

4218.1 The Mayor shall, at the request of a housing provider, issue a Certificate of Assurance pursuant to § 221 of the Act, for a housing accommodation exempted under § 205(a)(2) or 205(a)(4) of the Act, for which any building permit has been issued.

4218.2 A housing provider's request for a Certificate of Assurance shall be in writing and shall be accompanied by the following:

- (a) A declaration that the housing accommodation is exempt from the Rent Stabilization Program under either §§ 205(a)(2) or 205(a)(4) of the Act; and
- (b) A copy of any building permit issued for the housing accommodation after May 1, 1985.

4218.3 Within twenty (20) days after receipt of a properly filed request for a Certificate of Assurance, the Rent Administrator shall forward to the Mayor a determination of preliminary approval and a recommendation for issuance of a Certificate of Assurance.

4218.4 The Rent Administrator shall recommend denial where the Rent Administrator finds that the housing accommodation is not eligible for exemption under §§ 205(a)(2) and 205(a)(4) of the Act, or that a building permit has not been issued for the subject housing accommodation after May 1, 1985.

4299 DEFINITIONS

4299.1 The provisions of § 3899 of chapter 38 of this title and the definitions set forth in that chapter shall be applicable to this chapter.

4299.2 For purposes of § 4210.45 through § 4210.52 of these rules:

- (a) "Disabled tenant" means a tenant, who leases and occupies a rental unit, and who proves to the satisfaction of the Rent Administrator that at the time of approval of a petition for capital improvements pursuant to § 210 of the Act the tenant has: (1) a medically determinable physical impairment, or blindness, which prohibits and incapacitates 75% of that tenant's ability to move about, to assist himself or herself, or to engage in an occupation, and (2) an income of not more than \$ 40,000 per year.
- (b) "Elderly tenant" means a tenant, who leases and occupies a rental unit, and

who proves to the satisfaction of the Rent Administrator that at the time of approval of a petition for capital improvements pursuant to § 210 the tenant: (1) is at least 62 years of age, and (2) has a gross income of not more than \$ 40,000 per year.

CHAPTER 43: EVICTIONS AND RETALIATORY ACTION

4300 EVICTIONS

- 4300.1 No tenant may be evicted from a rental unit for any reason other than for non-payment of rent unless the housing provider has properly served the tenant with a valid written notice to vacate and has served a copy of that notice on the Rent Administrator not more than five (5) days after service on the tenant.
- 4300.2 No action for possession of a rental unit may be initiated by a housing provider before the expiration of the time period set forth in the notice.
- 4300.3 If a housing provider seeks possession of a rental unit by bringing an action in the Superior Court of the District of Columbia and the basis for the intended eviction is the non-payment of rent, the notice to vacate pursuant to § 501(a) of the Act need not be served on the Rent Administrator.
- 4300.4 The Rent Administrator may review each notice to vacate to determine if it meets the requirements of this chapter.
- 4300.5 A hearing may be conducted in accordance with chapter 40 in order that a hearing examiner may issue a written decision upholding or denying the validity of a notice to vacate.

4301 NOTICE TO CORRECT OR TO VACATE

- 4301.1 If a housing provider seeks to recover possession of a rental unit on the grounds that the tenant is violating an obligation of the tenancy, the housing provider shall first serve the tenant with a notice to correct the violation or to vacate.
- 4301.2 The notice shall provide at least thirty (30) days for correction of the violation and shall specify what actions need to be taken by the tenant to avoid an eviction.
- 4301.3 The notice to correct the violation or to vacate may state that the housing provider may evict if the violations are uncorrected at the conclusion of the thirty (30) day notice period.
- 4301.4 Violations of an obligation of tenancy refer only to those obligations which are contained in a valid, written lease or in the D.C. Housing Code, and where the violations are alleged to have occurred no more than six (6) months prior to the issuance of the notice to correct the violation or vacate.

4302 NOTICES TO VACATE: REQUIREMENTS AND EFFECT

- 4302.1 In order to be valid, a notice to vacate, shall include the following:
- (a) A statement detailing the factual basis on which the housing provider re-

lies, including references to the specific provisions of Title V of the Act, on which the claim for eviction is grounded;

- (b) The minimum time to vacate (under § 501 of the Act);
- (c) A statement that the housing accommodation is registered with the Rent Administrator, and the registration number, or a statement that the accommodation is exempt from registration, and the basis for the exemption; and
- (d) A statement that a copy of the notice to vacate is being furnished to the Rent Administrator including the address and telephone number of the RACD.

4302.2 In case of a notice to vacate served for substantial rehabilitation, alteration, renovation, demolition, or discontinuance of use, the notice shall also contain the following:

"The law requires me to pay relocation assistance of \$ ____."

"If you let me know at least ten (10) days before you move, you will receive the relocation assistance no later than one (1) day before you move. If not, you will receive the relocation assistance within thirty (30) days after you move."

"If you fail to pay rent between now and the end of the one hundred eighty (180) [one hundred twenty (120)] day period, you may be evicted in a shorter period or may lose all or a part of the relocation assistance."

4302.3 In the case of a notice to vacate because of substantial rehabilitation, the notice shall contain the following:

"You have an absolute right to re-rent your unit immediately after the rehabilitation is completed. The rent will be \$ ____ contingent upon approval by the Rent Administrator."

4302.4 In the case of a notice to vacate for demolition or discontinuance of use, the notice shall contain a certification signed by the housing provider or the housing provider's agent that the tenant(s) have been provided the first opportunity to purchase in accordance with the provisions of D.C. Code § 45-1601 et seq. (1981), but have failed to exercise those rights within the time allowed.

4302.5 In the case of a notice to vacate because of plans for substantial rehabilitation, alteration, or renovation, the notice shall contain a signed certification by the housing provider or the housing provider's authorized agent that the RACD has approved the plans.

- 4302.6 In case of a notice to vacate because the housing provider intends to sell the unit to another party who will take immediate and personal use and occupancy of the unit, the notice shall also contain a certification signed by the housing provider or the housing provider's agent that the tenant(s) have been provided the opportunity to purchase pursuant to D.C. Code § 45-1601 et seq. (1981).
- 4302.7 If a court of competent jurisdiction has made a final determination that a tenant has performed an illegal act within the rental unit or housing accommodation occupied by the tenant, no appeal is pending, and the time for appeal has expired, the housing provider may serve a thirty (30) day notice to vacate.
- 4302.8 Any person utilizing the provisions of §§ 501(d) and (e) of the Act shall submit an affidavit to the Rent Administrator to accompany the notice to vacate, specifying that he or she will not demand or receive rent for any rental unit which is repossessed under this subsection during the twelve (12) month period beginning on the date of recovery of possession of the rental unit, and that the possession is sought for the immediate and personal use and occupancy as a dwelling.
- 4302.9 In case of a notice to vacate because the housing provider intends to sell the unit to another party who will take immediate and personal use and occupancy of the unit, the notice to vacate shall only be sent by the housing provider of record at the time of the issuance of notice and may not be sent by the contract purchaser.
- 4302.10 Except when the housing provider is seeking to evict the tenant because the purchaser intends to immediately occupy the unit for personal use, the housing provider may never issue a valid notice to vacate on the basis of the plans of a purchasing housing provider. For example, a housing provider may not evict tenants because the housing provider has initiated sale of the housing accommodation to another housing provider who intends to discontinue use, demolish the accommodation, or convert.
- 4302.11 To be valid, a notice to vacate shall be signed by the current housing provider or the housing provider's agent. When a notice to vacate is signed by an agent, service on the agent of any and all complaints, orders, or other documents with respect to the notice shall constitute service on the housing provider.
- 4302.12 The requirements for a valid notice to vacate because of conversion of the housing accommodation to a condominium or cooperative shall be in conformity with the provisions of the Rental Housing Conversion and Sales Act of 1980, D.C. Code § 45-1601 et seq. (1981).

4303 RETALIATORY ACTION

- 4303.1 For purposes of this section, "Retaliatory action," is action intentionally taken against a tenant by a housing provider to injure or get back at the tenant for having exercised rights protected by § 502 of the Act.

4303.2 No housing provider shall take any retaliatory action against any tenant who exercises any rights protected by § 502(a) of the Act.

4303.3 Retaliatory action shall include, but is not limited to the following:

- (a) Any action or proceeding not otherwise permitted by law which seeks to recover possession of a rental unit;
- (b) Any action which would unlawfully increase rent, decrease services, increase the obligation of a tenant, or constitute undue or unavoidable inconvenience, violate the privacy of the tenant, harass the tenant, reduce the quality or quantity of service;
- (c) Any refusal to honor a lease or rental agreement or any provision of a lease or rental agreement, refusal to renew a lease or rental agreement, termination of a tenancy without cause; or
- (d) Any other form of threat or coercion.

4303.4 When a tenant petition, filed in accordance with § 4214.1 alleges retaliatory action as in § 4303.3, the Rent Administrator shall make the presumption that the housing provider's alleged retaliatory action was, in fact, retaliatory if it was taken during the six (6) month period after the tenant did any of the following:

- (a) Made a written request or an oral request in the presence of a witness to the housing provider to make repairs necessary to bring the housing accommodation or the rental unit into compliance with the housing regulations;
- (b) Contacted appropriate officials of the District of Columbia government, either orally in the presence of a witness or in writing, concerning existing violations of the housing regulations in the rental unit the tenant occupies or pertaining to the housing accommodation in which the rental unit is located, or reported to the officials suspected violations which, if confirmed, would render the rental unit or housing accommodation in noncompliance with the housing regulations;
- (c) Legally withheld all or part of the tenant's rent after having given a reasonable notice to the housing provider, either orally in the presence of a witness or in writing, of a violation of the housing regulations;
- (d) Organized, was a member of, or was involved in any lawful activities pertaining to a tenant organization;
- (e) Made an effort to secure or enforce any of the tenant's rights under the tenant's lease or contract with the housing provider; or

(f) Brought legal action against the housing provider.

4303.5 Clear and convincing evidence shall be required to rebut the presumption contained in § 4303.4.

4303.6 When the Rent Administrator makes a finding of retaliation in violations of § 502 of the Act by a housing provider, the Rent Administrator may order the housing provider, in addition to any other penalty prescribed by law, to cease and desist from taking such action, under such terms and conditions as the Rent Administrator may prescribe.

4399 DEFINITIONS

4399.1 The provisions of § 3899 of chapter 38 of this title and the definitions set forth in that section shall be applicable to this chapter.

**CHAPTER 44: DEMOLITION OR CONVERSION OF RENTAL HOUSING AND RE-
LOCATION ASSISTANCE**

4400 DEMOLITION AND CONVERSION

- 4400.1 Where a housing provider requests a permit to demolish a housing accommodation by filing an application with the Department of Consumer and Regulatory Affairs, a copy of the application shall be filed with the Rent Administrator.
- 4400.2 The housing provider shall accompany the copy of the permit application for the Rent Administrator with a certification that the demolition is not for the purpose of constructing or expanding a hotel, motel, inn, or other structure used primarily for transient residential occupancy.
- 4400.3 The Rent Administrator shall determine whether the demolition is prohibited by § 602 of the Act, and shall notify the Department of Consumer and Regulatory Affairs of the determination.
- 4400.4 If the housing provider fails to comply with the requirements of this section, or if a demolition is prohibited by § 602 of the Act, the Rent Administrator shall request that the demolition permit be denied or revoked by the District.
- 4400.5 No housing provider shall convert any housing accommodation or rental unit into a hotel, motel, inn, or other transient residential occupancy unit or accommodation.
- 4400.6 The Rent Administrator shall issue a notice of violation pursuant to § 4016 or take all other necessary and appropriate measures to ensure compliance with § 601 of the Act and § 4400.5.

4401 RELOCATION ASSISTANCE

- 4401.1 Each tenant displaced by actions taken under §§ 501(f), (g), (h), and (i) of the Act is entitled to relocation expenses provided by the housing provider pursuant to the provisions of Title VII of the Act.
- 4401.2 Tenants who should have received a notice of the right to relocation payments, but who did not receive the notice, are entitled to receive money for moving costs in accordance with the requirements of § 703 of the Act.
- 4401.3 If more than one (1) tenant is living in a rental unit or if the rental unit is rented to one (1) or more subtenants, the relocation money shall be payable to the tenant or subtenants bearing the cost of removing the majority of the furnishings.
- 4401.4 The housing provider who sends to the tenant the notice required under Title VII of the Act is the one who shall pay the tenant the required relocation money.

- 4401.5 Payment of money to the tenant shall be in the form of cash, money order, or certified check payable to the tenant.
- 4401.6 The amount of the relocation payments and the time at which they shall be paid to each tenant shall conform to § 703 of the Act.
- 4401.7 No payment of relocation assistance shall be made with respect to any rental unit which is the subject of an outstanding judgment for possession obtained by the housing provider or housing provider's predecessor in interest against the tenants or subtenants.
- 4401.8 Where an outstanding judgment for possession is based upon non-payment of rent and arises after the notice has been given, the housing provider shall pay relocation assistance in an amount reduced by the amount determined by the court rendering the judgment for possession to be due and owing to the housing provider.
- 4499 DEFINITIONS**
- 4499.1 The provisions of § 3899 of chapter 38 of this title and the definitions set forth in that section shall be applicable to this chapter.

APPENDIX OF FORMS

Appendix 44-1 through Appendix 44-3 are intended for illustration only.

APPENDIX 44-1

**FORM 1: NOTICE OF APPEAL
DISTRICT OF COLUMBIA
RENTAL HOUSING COMMISSION**

Appellant

In Re: [Case Number]

[Property Address]

v.

Appellee

NOTICE OF APPEAL

[Name of Appellant] hereby appeals the Rent Administrator's decision and order of [Date], and asserts the following:

- 1.
2. [Clear and concise statement(s) of the alleged errors in the Rent Administrator's decision and order.]
- 3.
- .
- .
- .

WHEREFORE, [Name of Appellant] prays that the Rent Administrator's decision and order be [specific statement of the relief requested].

Respectfully,

[Signature of Appellant or Counsel]

[Typed/Printed Name of Appellant/Counsel]

[Bar Number of Counsel]

[Address of Appellant or Counsel]

[Telephone Number of Appellant/Counsel]

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Notice of Appeal was [mailed first class U.S. postage prepaid; or hand delivered; or mailed certified U.S. postage prepaid] to [Name of Appellee/Counsel] at [Address of Appellee/Counsel], this _____ day of _____ 20____ .

[Signature of Certifier]

APPENDIX 44-2

FORM 2: NOTICE OF APPEARANCE

DISTRICT OF COLUMBIA

RENTAL HOUSING COMMISSION

Appellant

In Re: [Case Number]

[Property Address]

v.

Appellee

APPEARANCE

The Commission will please note the entry of [Name of Counsel] in the above matter as counsel for [appellant] [appellee], on this _day of _____, 20

Name:

Address:

Telephone No.:

[A copy of this notice must be served on all parties or their representatives by the filing party.]

APPENDIX 44-3

FORM 3: MOTION

DISTRICT OF COLUMBIA

RENTAL HOUSING COMMISSION

Appellant

In Re: [Case Number]

[Property Address]

v.

Appellee

MOTION TO/FOR [short, concise title]

[Name of Movant], Appellant/Appellee, hereby moves [clear, concise statement of motion]

For the following reasons:

1.

2.

3.

. [Concise statement(s) of reasons supporting motion.]

.

.

Respectfully,

[Signature of Movant/Counsel]

[Printed Name]

[Address]

[Telephone Number]

CERTIFICATE OF SERVICE

[See Form 1]

[Signature of Certifier]