

CHAPTER 8

ADMINISTRATIVE REMEDIES FOR RENT OVERCHARGES OR NONREGISTRATION

8000. Scope of Regulations

These regulations establish certain administrative remedies for violations of the rent overcharge (excess rent) and registration provisions of the Santa Monica Rent Control Charter Amendment (Rent Control Law). The authority for these regulations is contained in Sections 1803(g), 1803(q), and 1809(b) of the Santa Monica City Charter.

8000.5. Regulations Not to be Deemed Administrative Constructions of Limiting Provisions of Rent Control Law

Any limitations imposed by these regulations upon the Board's authority, upon the liability of any property owner or landlord, or upon the rights of any tenants reflect discretionary policy choices made deliberately by the Rent Control Board for reasons of administrative economy and convenience, and do not constitute an administrative construction of any limiting provisions of the Rent Control Law. With particular regard to the provisions of Regulations 8010, 8014, 8021, 8023, and 8024, the Rent Control law grants greater powers to the Board, greater rights to tenants, and imposes greater liabilities and obligations upon landlords than do these regulations. These regulations are not intended and should not be applied as administrative constructions of the Rent Control Law to be relied upon by a court of law in construing the Rent Control Law in any civil proceeding.

8000.6. Severability

If any regulation or portion of any regulation within this Chapter is for any reason held to be invalid, unconstitutional, or otherwise unenforceable by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter. The Board hereby declares that it would have adopted each regulation and portion thereof in this chapter not declared invalid or unconstitutional, without regard to whether any regulation or portion thereof would be declared invalid or unconstitutional subsequently.

SUBCHAPTER A

COMPLAINT

8001. Complaint

Any person who seeks to file an administrative complaint with the Board must comply with this chapter. Any person with a beneficial interest in the outcome of the proceeding or the Board's Administrator may seek to file a complaint under this chapter.

8002. Complaint Forms

Any person seeking to file a complaint under this chapter must do so on the form approved by the Board.

8003. Type of Complaints

A complaint may be filed under this chapter for either of the following:

- (a) Nonregistration of a rental unit, or registration of a rental unit or property which is incomplete as defined in Regulation 8010 below.
- (b) Acceptance and retention by a landlord of any payment of rent in excess of the lawful rent. The lawful rent is defined in Regulation 8023.

A complaint submitted under subsection (a) shall be processed in accordance with subchapters B and D of this chapter.

A complaint submitted under subsection (b) shall be processed in accordance with subchapter C and D of this chapter.

8009. Administrative Dismissals of Complaints

- (a) The Board may dismiss a complaint in any of the following circumstances:
 - (1) Where the complaint submitted fails on its face to state a violation of the Charter Amendment;
 - (2) Where the complaint submitted pertains to a unit over which the Board has no jurisdiction; or
 - (3) The identical issue involving the identical parties and the identical time period has already been heard and decided by a court having jurisdiction, or the Board or its hearing examiners. This regulation does not require the dismissal of a complaint under any circumstances.
- (b) Any of the following persons may make an administrative determination to dismiss a complaint:
 - (1) A majority of the Rent Control Commissioners;
 - (2) The Administrator; or
 - (3) The Supervisor of Hearing Examiners.
- (c) A copy of a notice of administrative determination to dismiss a complaint containing the applicable reasons for dismissal shall be mailed to the parties.
- (d) Except where the Board has ordered the dismissal in the first instance, the party whose complaint is dismissed shall have the right to request reconsideration by the Board of the dismissal.
- (e) Dismissal shall not constitute a bar to refile of an administrative complaint nor bar any person from maintaining a civil action.

SUBCHAPTER B

ACTION ON COMPLAINT FOR NONREGISTRATION OR INCOMPLETE REGISTRATION

8010. Incomplete Registration for Purposes of Withholding Remedy

- (a) For purposes of this subchapter, an initial registration is incomplete if it omits any of the following:
- (1) The address of the property and designation of each rental unit thereon;
 - (2) The name and address for service of notice on the landlord(s);
 - (3) The base rent for each unit under section 1804 of the Rent Control Law, unless the MAR for each unit has been certified;
 - (4) The signature of an owner, or authorized agent of the owner for whom an authorization form is on file with the Board.
- (b) For purposes of this subchapter, change of ownership registration forms pertaining to a previously registered property and filed by a new owner subsequent to January 1, 2001 shall be deemed incomplete if they omit any of the following:
- (1) The address of the property;
 - (2) the name(s) and street address(es) of the business or residence of the landlord(s), including the manager of the property, if any. If the owner of the property is a corporation, the registration form shall provide the street address of its principal place of business and the name and street address of its chief executive officer. If the owner of the property is a partnership, the registration form shall provide the street address of its principal place of business and the names and street addresses of the business or residence of each partner. If the owner of the property is a limited liability company, the registration form shall provide the street address of its principal place of business and the names and street addresses of the business or residence of each manager;
 - (3) the date of purchase or close of escrow;
 - (4) a declaration under penalty of perjury that the information is true and correct, with the signature of an owner, or authorized agent of the owner for whom an authorization form is on file with the Board.
- (c) For purposes of this subchapter, Vacancy Unit Registration forms filed after January 1, 2001, pertaining to a tenancy commenced on or after January 1, 1999, including a tenancy commenced pursuant to a HUD Section 8 contract which the tenant has later terminated or for which the tenant later became ineligible, shall be deemed incomplete if they omit any of the following:
- (1) The name and street address of the business or residence of the owner primarily responsible for administering the apartment building rental business.
 - (2) If the owner is a corporation, the name of the corporation, the street address of its principal place of business and the name of its chief executive officer. If the owner is a partnership, the name of the partnership, the street address of its principal place of business and the name of its managing partner. If the owner is a limited liability company, the name of the limited liability company, the street address of its principal place of business, and the name of its manager;
 - (3) The date and the reason the unit became vacant;
 - (4) The date the unit was re-rented and the new rental rate in effect for the new tenancy;

- (5) a declaration under penalty of perjury that the information is true and correct, with the signature of an owner, or authorized agent of the owner for whom an authorization form is on file with the Board.
- (d) For purposes of this subchapter, Incentive Unit Registration forms filed after January 1, 2001, pertaining to a new Maximum Allowable Rent of an incentive unit upon expiration of an Incentive Housing Program Regulatory Agreement shall be deemed incomplete if they omit any of the following:
- (1) The name and street address of the business or residence of the owner primarily responsible for administering the apartment building rental business;
 - (2) If the owner is a corporation, the name of the corporation, the street address of its principal place of business and the name of its chief executive officer. If the owner is a partnership, the name of the partnership, the street address of its principal place of business and the name of its managing partner. If the owner is a limited liability company, the name of the limited liability company, the street address of its principal place of business, and the name of its manager;
 - (3) The rental amount collected for the incentive unit ninety (90) days prior to the expiration of the Regulatory Agreement, which is the new Maximum Allowable Rent of the unit.
 - (4) The signature under penalty of perjury of an owner or authorized agent of an owner for whom an authorization form is on file with the Board.
- (e) For purposes of this subchapter, Condominium Rent Level Unit Registration forms, pertaining to a new base rent for separately alienable, unsold condominium units as defined in regulation 3302(a), shall be deemed incomplete if they omit any of the following:
- (1) The name and street address of the business or residence of the owner primarily responsible for administering the apartment building rental business;
 - (2) If the owner is a corporation, the name of the corporation, the street address of its principal place of business and the name of its chief executive officer. If the owner is a partnership, the name of the partnership, the street address of its principal place of business and the name of its managing partner. If the owner is a limited liability company, the name of the limited liability company, the street address of its principal place of business, and the name of its manager;
 - (3) The base rent of the unit. For tenancies which commenced on or before May 7, 2001, the base rent is the lawful rent in effect on May 7, 2001. For tenancies which commenced after May 7, 2001, the base rent is the actual rent in effect on the initial date of tenancy.
 - (4) The signature under penalty of perjury of an owner or authorized agent of an owner for whom an authorization form is on file with the Board.
- (f) A registration form which is incomplete within the relevant subparagraph of this regulation shall be considered nonregistration for purposes of this subchapter. Every reference to "nonregistration" in this subchapter includes registration which is incomplete under this regulation.
- (g) The registration of incorrect information or the omission of information other than that called for by the relevant subparagraph of this regulation, above shall not be the basis for a complaint for nonregistration seeking authorization to withhold rent under this subchapter.

However, other remedies for such noncompliance are not limited by this regulation or subchapter.

[8010(b)(2)(5),(c)(1)(2)(3)(4)(5),(d)(1)(2)(3)(4) Amended 12/7/00; Effective 12/30/00]

[8010(b)(1)(2)(4), (c)(2), (d)(2), (e), (f), (g) Amended 01/10/02; Effective 01/26/02]

8011. Nonexclusive Remedy

Pursuing a complaint for nonregistration under this regulation is not a bar to pursuing or participating in any other remedy or proceeding.

8012. Staff Investigation of Nonregistration Complaint

Upon the filing of a complaint for nonregistration or incomplete registration, staff shall investigate the records of the Board to determine whether the rental unit or property is registered in compliance with Regulation 8010. If the rental unit or property is registered in compliance with Regulation 8010, the complainant shall be notified and the complaint shall be administratively dismissed. The complaint shall otherwise be processed in accordance with Regulations 8013 through 8018 below.

8013. Hearing Procedure for Nonregistration Complaint

If the staff determines that the rental unit or property is not registered in compliance with Regulation 8010, the staff shall mail a copy of the complaint to the record owner of the unit or property to which the complaint pertains and shall schedule a hearing before a hearing examiner to determine whether a wilful violation of the Rent Control Law or regulations has occurred, and if so, whether the Board should authorize the withholding of rent pursuant to section 1803(q) of the Rent Control Law.

8014. Standards for Decision on Complaint for Nonregistration

- (a) The issues to be determined at the hearing shall be limited to whether the registration form has been completed and filed pursuant to the requirements of Regulation 8010, and, if not, whether the landlord's failure to register in compliance with Regulation 8010 is, at the time of the hearing, knowing and wilful.
- (b) The complainant shall have the burden of proving a wilful and knowing violation of the registration requirement by a preponderance of the evidence.
- (c) A landlord shall be presumed to know and be aware of the registration requirements specified in Regulation 8010 and preexisting regulations and provisions of the Rent Control Law and any regulations in existence at the time of the hearing.

8015. Effect of Finding of Wilful Nonregistration

A finding of wilful nonregistration shall be deemed a violation of the Rent Control Law with respect to all units on the property. That finding shall be binding upon the landlord in any other administrative proceeding brought subsequently by any person against that landlord in which a violation of the Rent Control Law may be at issue.

8016. Registration Before Hearing

If the landlord registers the rental unit or property in compliance with Regulation 8010 before the hearing, the complaint shall be dismissed and the matter shall not be heard. The complainant shall promptly be notified of the dismissal of the complaint.

8017. Decision Authorizing Rent Withholding

- (a) If the hearing examiner determines that the landlord has wilfully failed to register the rental unit or property in accordance with Regulation 8010 the hearing examiner shall authorize the tenant(s) of the unit or property to withhold payment of rent which would otherwise be due and payable until such time as landlord complies with the requirements of Regulation 8010. The hearing examiner, in his or her discretion, may postpone authorization of rent withholding by up to 7 days to permit additional time for compliance by the landlord with Regulation 8010.
- (b) Any tenant who is authorized by the hearing examiner to withhold rent pursuant to a complaint for nonregistration may cease to pay any rent to landlord pending further notice, but will be directed by the hearing examiner's decision to maintain available the funds which would otherwise have been paid as rent, in the event that all or some of those funds must eventually be paid pursuant to subsection (e), below.
- (c) The authorization to withhold need not state the names of the tenants in any unit in order to be effective.
- (d) The landlord may request a compliance determination at any time by applying to the hearing examiner who authorized rent withholding and furnishing a copy of the registration form filed. Upon notification by the Board that the rental unit or property is registered in compliance with Regulation 8010 the tenant(s) shall resume regular rental payments beginning with the next regularly scheduled rent payment after receipt of notice of compliance.
- (e) In addition to resuming regular rent payments the tenant shall, within ten days of notification by the Board, pay to the landlord a portion of the rent withheld during the period of rent withholding, as determined in the notice of compliance, as follows:
 - (1) If the landlord complies within 30 days of the final hearing examiner or Board decision permitting rent withholding, 75% of the rent withheld.
 - (2) If the landlord complies within 31 to 60 days of the final hearing examiner or Board decision permitting rent withholding, 50% of the rent withheld.
 - (3) If the landlord complies within 61 to 90 days of the final hearing examiner or Board decision permitting rent withholding, 25% of the rent withheld.
 - (4) If the landlord complies after 90 days following the final hearing examiner or Board decision permitting rent withholding, the tenant shall keep all of the rent withheld.

8018. Relationship of Withholding Remedy to Other Administrative Remedies

- (a) In accordance with Regulation 8015 above, a determination that a landlord has wilfully failed to register a unit or property in compliance with Regulation 8010 shall constitute a binding determination that landlord was, at the time of such decision and until determination of compliance is made, in violation of the Rent Control Law. However, such determination does not pertain to any other period of time, and has no binding effect as to any other period of time.
- (b) Upon a finding that landlord is, at the time of hearing, in wilful and knowing violation of the registration requirements of the Rent Control Law and Regulation 8010, landlord shall not implement any rent increases to which he or she would otherwise be entitled until a determination of compliance is made.

[8018(b) Amended 10/11/90; Effective 10/30/90]

- (c) Where noncompliance with any of the registration requirements of Regulation 8010 is raised in a proceeding upon a complaint for excess rent pursuant to subchapter C of this chapter, and a finding is made that landlord is, at the time of the hearing, in wilful and knowing violation of the requirements of Regulation 8010, then the hearing examiner or Board may authorize withholding of rent pursuant to Regulation 8015 in addition to any other relief ordered in that proceeding.

- (d) Where withholding is authorized at the same time that a complaint for excess rent is sustained, the hearing examiner shall at the time of applying Regulation 8017(e) insure that no withholding of rent authorized as a remedy for nonregistration shall be subtracted or otherwise taken into account in determining tenant's entitlement to recoupment of excess rent, so that the two remedies are separately applied.

SUBCHAPTER C

ACTION ON COMPLAINT FOR RESTITUTION OF RENT OVERCHARGES (EXCESS RENT) AND PENALTIES

8020. Scope of Chapter

The purpose of this subchapter is to establish the pre-hearing procedures, limitations, and substantive standards to be applied to complaints that a landlord has charged more than the maximum lawful amount of rent permitted by the Rent Control Law. The amount by which the rent charged exceeds the maximum lawful rent is a recoverable overcharge, also known as excess rent. This subchapter applies to all forms of excess rent, including, but not limited to:

- (a) a monthly charge greater than the maximum lawful rent;
- (b) the charging by a landlord of a "finder's fee," "key money," "reward" or any other fee, however denominated, as a condition of initial occupancy of the unit other than a lawful security deposit or monthly rent;
- (c) the charging by any person, other than a landlord, of a "finder's fee," "key money," "reward" or any other fee, however denominated, as a condition to the initial occupancy of a specific unit, if any portion of that fee is transferred to landlord or its payment inures to the benefit of the landlord, directly or indirectly;
- (d) the charging by any person, other than a landlord, of a "finder's fee," "key money," "reward" or any other fee, however denominated, as a condition to the initial occupancy of a specific unit, by any person, other than a licensed real estate broker or agent, or other person authorized by law to collect such a fee;
- (e) the charging of any fee for services or amenities which landlord is legally obligated to provide without additional charge, e.g., base amenities or services required to be provided by law;
- (f) the charging of any fee for services or amenities which were not legally required to be provided with the unit but which a tenant was required to agree to accept as a condition of occupying or continuing to occupy the unit, rather than pursuant to a bona fide separate agreement, as described in Regulation 3201.
- (g) The charging of any fee arising from the landlord-tenant relationship or pertaining to the continuing occupancy of a unit which is in addition to the lawful rent and initial security deposit and which is not authorized by law or separate agreement as defined in Regulation 3201.
- (h) The amount by which an otherwise lawful fee arising from the landlord-tenant relationship or pertaining to the continuing occupancy of a unit exceeds the amount allowed by law.
- (i) The amount of any rent increase which landlord was not entitled to implement, subject to the limitations in this subchapter.
- (j) The charging of unadjusted rent in violation of a decrease decision.

- (k) The reasonable market value of goods or services furnished by a tenant to a landlord or person in lieu of any of the fees described herein.
- (l) The charging of rent in excess of the lawful rent to a subtenant or co-tenant by a tenant.
- (m) The charging of any pass-through or surcharge which an owner is not lawfully authorized to charge.
- (n) The failure to pay interest on security deposits held by the landlord as mandated by regulation 14001.

[8020(n) Amended 01/10/02; Effective 01/26/02]

8021. Election of Judicial or Administrative Remedies

- (a) The remedy available upon an administrative complaint for excess rent is in lieu of and not additional to the remedy available in a civil action by the tenant for damages for excess rent. Subject to the exceptions in (b) and (c) below, once an administrative complaint is deemed filed in accordance with regulation 8026 and a hearing has been commenced by the taking of evidence, the complainant is thereafter barred from pursuing a civil action for damages relating to the same alleged period of time or receipt of excess rent which underlies the administrative complaint.
- (b) The election and bar provided in this provision does not apply to a civil action initiated pursuant to Code of Civil Procedure section 1094.5 to obtain judicial review of an administrative decision, nor to any civil action other than for damages for excess rent, nor does it in any way prevent a tenant from raising an equitable defense of setoff or other defense in an unlawful detainer proceeding.
- (c) Submission of a complaint for excess rent does not operate as an election of remedies until such time as it is filed and a hearing has commenced in which evidence has been taken. Rejection or withdrawal of the complaint prior to commencement of hearing does not preclude a complainant from seeking relief by civil action for damages for excess rent.
- (d) Except as provided in subsection (a) above, the remedies available under this chapter are additional to any other remedies that a complainant has under any law. Exhaustion of the administrative procedures under this chapter is not a prerequisite to the availability of any other remedy at law or equity, except that exhaustion of the administrative process shall remain a prerequisite to the filing of a writ pursuant to Code of Civil Procedure Section 1094.5 seeking judicial review of an administrative decision.

8021.5 "Landlord" Defined

For purposes of subchapter C, and in accordance with Section 1801(e) of the Rent Control Law, the term "landlord" whenever used herein includes the current property owner or any other person who is by law a landlord including successors and predecessors in interest of such persons. However, the liability of a successor owner for excess rent received by a predecessor in interest or for noncompliance of a predecessor in interest shall be limited as set forth in section 8024(h) below.

[8021.5 Amended 10/11/90; Effective 10/30/90]

[8021.5 Amended 4/25/91; Effective 5/8/91]

8022. Submission and Contents of Complaint

(a) A complainant seeking to file a complaint under this subchapter shall submit to the Board an original and one copy of the completed approved form and all required attachments. The complaint shall contain the following information:

- (1) The name and address of the complainant;
- (2) The name and address of the current owner or the current property manager of the property at which the complainant resides;

[8022(a)(2) Amended 10/11/90; Effective 10/30/90]

- (3) The date and amount of each payment to landlords, including successors and predecessors in interest, which is alleged to constitute excess rent, whether in whole or in part;
- (4) The names and current addresses of any other person or persons who have occupied or resided in the subject unit and who have paid any rent to any landlord at any time during which excess rent is alleged to have been paid by the complainant;

[8022(a)(4) Amended 2/11/93; Effective 4/2/93]

- (5) A certification that the complainant has read or has had read to them the Board's regulations in Chapter 8, subchapter C, and acknowledges the election of remedies which occur when the complaint is heard and the limitations on the administrative remedy imposed by Regulation 8022.

[8022(a)(5) Amended 2/11/93; Effective 4/2/93]

(b) The complainant must attach to the complaint or submit with it the following:

- (1) Copies of all receipts or cancelled checks or similar documentation available to the complainant tending to establish the alleged payment and acceptance of excess rent by the landlord;

[8022(b)(1) Amended 10/11/90; Effective 10/30/90]

- (2) Copies of any leases or rental agreements between the complainant and any landlord(s) including the initial lease or rental agreement under which the complainant occupied the unit, even if prior to the period for which excess rent is claimed;
- (3) Copies of any written agreements between the complainant and any landlord pertaining to payments for rental or purchase of items or services which may be considered or claimed to be "separate" from payment of rent for the complainant's unit;
- (4) Copies of any written agreements between complainant and any third party or landlord which may be considered separate from the rental agreement or lease and which concern a security deposit, a "finder's fee," a "broker's fee" or any other payment made in connection with initial occupancy of the unit in addition to or other than rent;
- (5) Copies of any annual or periodic notices given by any landlord to the complainant concerning increases in the maximum allowable rent for the subject unit;
- (6) Copies of all other documents pertaining to the claim for excess rent, such as correspondence with any landlord, available to the complainant.

If such documents exist but are not readily available to the complainant, the complainant must so state and provide a written explanation as to why such documents cannot be obtained by complainant by ordinary means.

- (c) Failure of a complainant to attach copies of the foregoing documents to the complaint form, or furnish explanation for failure to do so, may result in determination that the complaint fails to state a prima facie case, or a determination that the complaint states a prima facie case for less than the amount claimed by complainant.
- (d) The complainant shall not be permitted to introduce documentary evidence at a subsequent hearing on the complaint unless copies of such documentary evidence were attached to the complaint, or a satisfactory explanation was provided for failure to attach such documents, or the documents could not have been obtained prior to the filing of the complaint in the exercise of reasonable diligence. This provision shall not prevent a hearing examiner or the Board from entertaining an offer of proof or testimony relating to such documents and considering such documents upon a finding of good cause and materiality.

8023. Limitations

In order that the administrative remedy for restitution of excess rent and penalties may be made available to the greatest number of tenants in the most efficient manner, the procedures and tenants' rights hereunder have been streamlined and may be narrower in some respects than the remedy available by civil action. The following limitations apply to the administrative remedy available under this chapter, but may or may not apply to civil actions.

- (a) Demand For Excess Rent Without Actual Receipt: No remedy is available under this chapter for any demand for payment of excess rent which did not result in actual payment and receipt by landlord of excess rent.
- (b) Full Refund Prior to Implementation of Increase: No remedy is available under this chapter for any payment of excess rent which was refunded by the landlord in whole to the complainant prior to any landlord's implementation of any subsequent rent increase.
- (c) Former Landlord With No Remaining Ownership: No remedy is available under this chapter against a landlord who has relinquished any and all ownership interest, legal, equitable, and beneficial by a bona fide, recorded transfer prior to the date on which the complaint is submitted. However, a successor in interest may be liable for excess rent received by a predecessor to the extent set forth in section 8024(h) below.

[8023(c) Adopted 10/11/90; Effective 10/30/90]

[8023(c) Amended 4/25/91; Effective 5/8/91]

- (d) Fully Performed Settlement Agreement Predating Complaint: No remedy is available under this chapter for any payment of excess rent where landlord's liability for said payment was discharged by a written agreement voluntarily entered into and fully performed prior to the filing of the complaint. The existence of such an agreement does not bar the processing and hearing of a complaint, but the existence and full performance of the agreement may be established by landlord in the course of the hearing process as a defense to specific allegations of overpayment.

An executory agreement, one which will not by its terms be fully performed within the 30 day period following the submission of the complaint, shall be considered in accordance with Regulation 8028.5.

- (e) Excess Rent Received More Than Three Years Before Complaint Filed: Subject to the exceptions specified in this subsection, no remedy is provided under this chapter for restitution of excess rent which was received more than three years before the filing of the complaint.

Any fact which would operate in a civil proceeding to toll or otherwise avoid the bar of a statute of limitations, including but not limited to fraudulent concealment, estoppel, breach of a duty of

disclosure, or conspiracy shall operate identically to avoid the three year limitation on the availability of restitution under these regulations. The complainant must identify any such fact and the evidence available in support of such fact in the appropriate section of the complaint form.

Evidence of acceptance of excess rent payments more than three years before the filing of the complaint may be considered in establishing that any landlord was in violation of the Rent Control Law at the time of implementing any rent increase which was in effect during the three-year period. See Regulation 8024. If excess rent was accepted both before and after the point in time three years before the filing of the complaint, any partial refunds made by any landlord at any time other than by written agreement, or any amounts previously withheld by the tenants, shall be deemed to apply to discharge liability for the earliest acceptance of excess rent.

- (f) In Lieu of Civil Action: The commencement of a hearing of a complaint under this subchapter bars the complainant and all persons in privity with the complainant from maintaining a civil damage suit pursuant to Section 1809(a) of the Rent Control Law, as to any payments of excess rent and any periods of time placed at issue by the filed complaint. The hearing is deemed commenced at the point at which any evidence is received on the issues raised in the complaint.
- (g) Prior or Pending Civil Action: No complainant may pursue the remedy available under this chapter with respect to any excess rent which is the subject of any outstanding civil action, whether or not such civil action has been resolved. The scope of a civil action and its preclusive effect shall be determined by the hearing examiner or Board by reference to the pleading therein. It shall be the burden of the landlord to raise the fact that a prior or pending civil action exists. A civil action which has been dismissed without prejudice shall not bar the availability of a remedy under these regulations.
- (h) Excess Rent Amounting to Less Than \$100: Any complaint for excess rent which seeks recovery of less than \$100 in excess rent, exclusive of penalties, may be dismissed subject to later refileing.
- (i) Penalty Previously Imposed Relative to Same Calendar Year: The Board will not impose more than one penalty amount upon a landlord found to have wilfully accepted excess rent from a single complainant during a single calendar year even if the excess rent accepted during that calendar year is separately addressed in multiple complaint proceedings.

8024. Historical Lawful Rent Levels in Excess Rent Complaint Proceedings

- (a) Calculation Generally: Except where the three year limitation period is found inapplicable, the amount of rent overcharge (excess rent) accepted by a landlord is determined by the difference between the amount of rent, not including any lawfully included registration fee pass-throughs or surcharges, paid on any occasion during the three years preceding the filing of the complaint and the historical lawful rent level in effect on the date that payment was made. As to a payment for initial occupancy of a unit, excess rent may also be established by the extent to which a payment denominated security deposit exceeds the lawful maximum security deposit under California law.
- (b) Maximum Allowable Rent: The lawful rent level for any historical point in time is determined initially by reference to the maximum allowable rent ("MAR") reflected in Board records, consistent with the base rent underlying a certified maximum allowable rent, if any, and including all general adjustments granted prior to the date in question and any individual rent adjustments ordered by the Board and in effect on the date in question.
- (c) Maximum Lawful Rent: The historical maximum lawful rent determined initially by reference to the MAR is then subject to further determination upon proof that on the date in question, the landlord was not in compliance and hence not entitled to implement one or more previously available rent increases, whether a general adjustment or individual adjustment, because of landlord's noncompliance with specific requirements of the Rent Control Law set forth in subsection (e) below.

The authority for this provision is Section 1805(h) of the Rent Control Law and section 1947.7(c) of the Civil Code. A determination that a landlord was not entitled to implement a rent increase is not a penalty.

[8024(c) Amended 10/11/90; Effective 10/30/90]

- (d) Burden of Proof of Historical Noncompliance: A complainant may allege and offer evidence to establish that any historical implementation of a rent increase was at that time unlawful due to landlord's noncompliance with the legal requirements specified in subsection (e) below, and that landlord remained noncompliant during any subsequent implementation of any rent increase.

[8024(d) Amended 10/11/90; Effective 10/30/90]

- (e) Types of Noncompliance: For purposes of this chapter, the only forms of noncompliance with legal requirements which render implementation of a rent increase unlawful on any historical date are limited to the following:

- (1) Knowing retention of excess rent received by landlord from the complainant. Receipt and retention of an insubstantial amount, in good faith, as a result of unintentional mathematical error or other mistake of fact, shall not constitute noncompliance for purposes of this subchapter;

[8024(e)(1) Amended 10/11/90; Effective 10/30/90]

- (2) Failure of landlord to pay in full all outstanding registration fees and penalties which have not otherwise been barred by the statute of limitation;

[8024(e)(2) Amended 10/11/90; Effective 10/30/90]

- (3) Wilful failure to register or to register completely, as required by Regulation 8010, if such noncompliance exists at the time of the filing of the complaint;

- (4) Failure to correct within a reasonable period of time conditions specified in a citation or notice of violation of health, safety, or housing laws existing at the subject property with respect to complainant's unit or common areas of the building. A reasonable period of time shall not exceed 30 days. A determination by the agency issuing the notice or citation that the condition has been corrected shall be conclusive upon the hearing examiner.

- (f) Period of Noncompliance: Noncompliance with any of the above requirements shall render implementation of rent increases unlawful during the period of noncompliance and until compliance occurs. Rent increases lawfully implemented before the period of noncompliance began are not affected by subsequent noncompliance and remain in effect. Likewise, when noncompliance ends, all rent increases which became available during the period of noncompliance may be implemented prospectively, subject to limits imposed by state law and to the limits in Regulation 4107, if applicable.

- (g) Burden of Proof of Subsequent Compliance: Upon a finding supported by a preponderance of the evidence that landlord was not in compliance with any of the requirements of subsection (e) above at the time that a rent increase was implemented, such noncompliance will be presumed to continue until the present time unless landlord establishes by a preponderance of the evidence that he/she came into compliance on a subsequent date. A landlord may offer evidence of compliance at any point in time without admitting or being deemed to have admitted prior noncompliance.

[8024(g) Amended 10/11/90; Effective 10/30/90]

(h) Noncompliance Prior to Ownership

Every person who acquires an interest in rental property shall be deemed conclusively to be in compliance at time of acquisition, except when, at the time of acquisition,

1. A final decision or civil judgment requiring restitution of excess rent is outstanding and unsatisfied. This exception shall not apply to approved repayment agreements.
2. A complaint for excess rent pertaining to the property is pending before the Board.
3. There is an outstanding citation or uncorrected notice of violation of a health, safety or housing code pertaining to the property.

Each of the foregoing exceptions to the presumption of a compliance at acquisition are matters of public record from which a person acquiring property receives constructive notice of potential liability.

[8024(h) Adopted 10/11/90; Effective 10/30/90]

[8024(h) Amended 4/25/91; Effective 5/8/91]

8025. Administrative Determination of Prima Facie Case

- (a) Within 10 business days of the submission of a complaint under this subchapter, an administrative staff member designated by the Board administrator shall review the complaint and attachments for the purpose of determining whether and for what amount the complaint and attachments state a prima facie case. The staff member shall verify the information provided therein to the extent possible, in accordance with internal agency procedures.
- (b) Prima Facie Case - Full Amount Claimed: If the staff member determines that the complaint and supporting documentation is complete and establishes a prima facie case that excess rent has been paid by complainant to landlord in the amount claimed, the staff member shall notify the complainant and initiate the pre-hearing compliance process under regulation 8027.

[8025(b) Amended 10/11/90; Effective 10/30/90]

- (c) Prima Facie Case - Partial: If the staff member determines that the complaint and supporting documentation are insufficient to establish a prima facie case as to the entire amount claimed, but that amendment of the complaint, submission of additional documentation available to the complainant or hearing examiner, or available testimony may suffice to establish a prima facie case, the staff member shall contact the complainant and discuss the deficiencies. After the staff member reevaluates the prima facie case, the staff member will determine for what amount, if any, the complaint states a prima facie case. If the complaint still states a prima facie case for less than the entire amount claimed, the complainant shall have the option of proceeding on the amount as determined or withdrawing the complaint prior to its filing. The complainant must indicate the choice of withdrawing the complaint by doing so unequivocally in writing within 10 days after request.
- (d) No Prima Facie Case: If the staff member ultimately determines that the complaint and supporting documentation are insufficient to establish a prima facie case in any amount and that the complainant cannot reasonably be expected to produce additional evidence sufficient to establish the allegations of the complaint, then the complaint will be referred to the administrator for rejection. Upon rejection, the complainant shall be notified. The complaint or any portion thereof may be refiled at a latter date should the complainant obtain additional evidence. In that case, the complaint will be processed as if filed for the first time.
- (e) Applicability of Limitations: The staff member making the determination as to prima facie case shall take into account all of the limitations specified in Regulation 8023, as well as any other limits on the administrative remedies specified under any regulation in this subchapter.

8026. Time of Filing of Complaint

The complaint for excess rent, for purposes of the limitations period under regulation 8023, shall be deemed "filed" when the pre-hearing compliance process under Regulation 8027 has been initiated by notice to the landlord.

8027. Response to Complaint and Pre-Hearing Compliance

- (a) Filing and Notice: Upon determination that the complaint and supporting documentation establish a prima facie case for the entire amount claimed, or upon election of the complainant to proceed upon a lesser amount, the complaint shall be deemed filed. The staff member shall notify the landlord or landlords to whom the complaint relates by mail of the filing of the complaint, including a copy of the complaint, and a request for compliance with such notice, but omitting the supporting documentation. The request for compliance shall afford the landlord a period of 10 days in which to make full repayment of the amount for which the complaint states a prima facie case and thereby avoid further proceedings. The notice shall inform the landlord that the supporting documentation may be reviewed at the Board's offices.
- (b) Withdrawal of Complaint After Filing: The Board has an independent interest in the enforcement of the Rent Control Law which could be jeopardized by withdrawal of complaints once filed. A complainant wishing to withdraw a complaint may not do so without the consent of the Board. A request to withdraw must be supported by a written statement of reasons demonstrating that the withdrawal will not weaken or interfere with the Board's enforcement of the Rent Control Law.
- (c) Notice of Consequences: The request for compliance sent to the landlord shall also state that failure to comply within 10 calendar days from mailing of notice may result in adjudication of the complaint and may result in liability for a greater amount than that for which the complaint states a prima facie case, as well as the imposition of penalties and additional damages up to \$500.
- (d) Compliance by Repayment in Full: A landlord may comply with the notice by repaying to the complainant the entire amount specified in the request for compliance, and presenting to the Board a receipt or other document clearly evidencing that tenant has been paid the amount in question in satisfaction of the compliance request.
- (e) Compliance by Executory (Unperformed) Agreement: A landlord may proffer an executory agreement, one calling for performance at a later date. Such an agreement will be processed in accordance with Regulation 8028.5.

8028. Settlement Conference

- (a) Upon filing of the complaint and issuance of request for compliance to landlord, and the expiration of 10 days without submission of evidence of compliance or an agreement as provided in Regulation 8027 above, the matter will be scheduled for a settlement conference as a final step prior to hearing. The Settlement Conference Facilitator (SCF) shall make reasonable effort to accommodate the parties in scheduling the date and time of the settlement conference. Failure of either party to attend shall not bar the matter from proceeding to hearing.
- (b) The purpose of this regulation is to provide an expeditious and affordable mechanism for complainants and landlords to meet and resolve their differences informally, with the assistance of a skilled intermediary. This regulation insures due process for landlords and complainants by encouraging each party to assess their probable entitlement and exposure to liability without requiring agreement, and by allowing each party to speak with their attorney, if any, prior to committing to any agreement.
- (c) No attorney may participate in the settlement conference on behalf of a party. All parties must appear individually, except that a representative other than an attorney may appear on behalf of a landlord which is a business entity and not an individual. Only the complainant, the landlord, and the Settlement Conference Facilitator shall participate.

- (d) At the conference, the landlord shall be afforded an opportunity to repay the entire amount specified in the compliance request and thereby terminate the process.
- (e) If both parties appear, the settlement conference shall be conducted as follows:
- (1) The Settlement Conference Facilitator (SCF) will permit landlord to review documentation submitted with complaint.
 - (2) Each party may make an oral statement.
 - (3) The SCF may direct questions to either or both parties to clarify their positions. Neither is required to answer.
 - (4) The SCF may summarize the respective positions of the parties and identify the disputed facts or law which prevent the parties from reaching agreement.
 - (5) The SCF may assess risks of adverse finding of fact or conclusions of law to each party if the matter proceeds to hearing.
 - (6) The SCF may conduct a brief private conference with each party, with object of inducing them to evaluate their position realistically.
 - (7) If the parties are able to agree, and the SCF is satisfied that the agreement is reasonable and voluntary, then its terms shall be reduced to writing. Either party may defer signing any agreement until he/she as had an opportunity to consult with an attorney. The parties shall in that event agree to reconvene with the SCF for the purpose of formalizing the agreement no later than 10 days thereafter.
 - (8) When formalized, an executory agreement shall become a final decision of the Board in accordance with Regulation 8028.5.
 - (9) If the parties formalize and fully perform the agreement within 10 days after the conference, the SCF shall transfer the matter to the administrator for dismissal.
 - (10) If the parties do not reconvene at the agreed time and place and/or do not formalize the agreement, or if no agreement is reached, the matter will be transferred to the hearings department for hearing.
 - (11) No record shall be made of any act, statement, or occurrence during the settlement process, nor shall any communication occur between the SCF and the hearings department concerning the settlement process, except that the SCF shall note in the file the unexcused nonappearance of the parties at the initially scheduled settlement conference. The hearing examiner may consider the appearance or nonappearance of the parties for the limited purposes set forth in Regulation 8030(c).

[8028 Amended 4/9/80; Effective 4/26/80]

[8028 Amended 5/12/83; Effective 5/20/80]

[8028 Amended 10/18/93; Effective 11/10/93]

8028.5 Executory Agreements and Agreements Reducing Liability

- (a) Authority of Board: The Board's authority to enforce the terms of the Rent Control Law cannot be limited by agreements to which it is not a party. The Board may refuse to approve executory agreements between a landlord and complainant, or agreements reducing liability, and insist upon proceeding with the hearings process if the requirements of subsections (b) and (c) are not met.

(b) Executory Agreement for Repayment of Excess Rent

Whether entered into before or after the submission of the complaint, any executory agreement for repayment of excess rent reached through, or as the result of, the Board's settlement conference process, shall become a final decision of the Board. The parties shall stipulate, in writing, that a final Board decision will be issued which includes the following:

- (1) The agreement will become a final (non-appealable) Board decision, without the necessity of findings of fact, conclusions of law or formal action by the Board.
- (2) In view of its consensual nature, a Board decision which incorporates an agreement under this regulation may not be challenged pursuant to C.C.P. §1094.5.
- (3) Landlord and successors in interest shall be deemed not in compliance with the Rent Control Law, and not entitled to implement any rent increases, as to the subject unit, until the agreement is fully performed.

[8028.5(b) Amended 10/11/90; Effective 10/30/90]

(c) Agreement (Made Outside Settlement Conference) Reducing Liability for Repayment

An agreement for repayment other than one reached in the course of the settlement conference which reduces the amount of excess rent to be repaid below the amount for which a prima facie case is shown shall be acceptable only following review and at the discretion of the Board. Upon submission of such an agreement for approval or rejection, legal staff shall speak privately with the complainant in order to ascertain whether the agreement was voluntarily and intelligently entered into. Legal staff shall prepare a report for the Board recommending acceptance or rejection of such an agreement.

In determining whether to accept or reject the agreement, the Board shall consider the following:

- (1) whether the reduction in liability corresponds reasonably to the costs to the complainant of proceeding to hearing and/or the risks of being denied restitution therein;
- (2) whether the landlord has attempted to influence the complainant by threat of adverse consequence, whether expressly or by implication, and whether or not such consequence can otherwise legally occur;
- (3) whether and to what extent the Board has a special interest under the facts of the case in pursuing the hearing process, even against the wishes of the complainant.

If the Board rejects the agreement, the landlord and complaining tenant will be notified. The proceedings under this subchapter shall continue from the point at which the agreement was generated. If the complainant thereafter fails to pursue the claim, the Board administrator may choose to be substituted as the complainant and the process will continue to final adjudication.

(d) Approved Executory Agreements

If the agreement is approved, and is an executory agreement, it will be adopted subject to the requirements of subsection (b) above.

[8028.5 Amended 10/28/93; Effective 11/10/93]

8029. Determination

Upon referral to the hearings department following exhaustion of the settlement process in regulation 8028, the hearing examiner shall schedule a hearing as hereinafter provided to determine:

- (1) Whether landlord has accepted and retained any payment or portion thereof in excess of the maximum lawful rent, and the amount of restitution to be ordered in light thereof;
- (2) To what extent, if any, the complainant is entitled to an additional award for interest upon any excess rent found by the hearing examiner;
- (3) Whether any receipt by landlord of excess rent during the year prior to the filing of the complaint was willful and if so, the amount of a penalty to be imposed pursuant to section 1809(b) of the Rent Control Law.

[8029 Amended 10/11/90; Effective 10/30/90]

8030. Standards for Decision In Excess Rent Complaints

- (a) Restitution. If the preponderance of the evidence establishes that landlord has accepted and retained any payment of rent or portion thereof in excess of the maximum lawful rent from the complainant, the current landlord is liable to the complainant for the amount by which payment or payments accepted and retained exceeded the maximum lawful rent.
- (b) Interest. The complainant shall be entitled to an award of interest of up to \$500 on the amount of excess rent for the period of time during which such excess rent was retained prior to the date of filing of the complaint. The applicable rate of interest shall be the rate specified by law (California Constitution, Article XV) and shall be simple interest.
- (c) Penalties. Upon a finding supported by a preponderance of the evidence that any landlord willfully violated the Rent Control Law by receiving or retaining excess rent during the year preceding the filing of the complaint, the hearing examiner may assess a penalty against the landlord to be added to the award. In making such determination, the hearing examiner shall presume that landlord acted with awareness of all legal requirements expressed by statute, charter, ordinance or regulation. The penalty may not exceed the difference between any interest awarded under subsection (b) above and \$500.

The amount of the penalty will be a proportion of the difference between the \$500 and the interest already awarded. The proportion will be determined by the amount by which the rent received by landlord during the previous year exceeded the maximum lawful rent which landlord was entitled to receive during that year.

- (1) If the rent received exceeded the lawful rent by 10% or less, the penalty shall be a third (33.3%) of the available amount.
- (2) If the rent received exceed the lawful rent by more than 10% but less than 25%, the penalty shall be two-thirds (66.6%) of the available amount.
- (3) If the rent received exceeded the lawful rent by 25% or more, than the entire remainder shall be awarded.
- (4) If the file reflects that the respondent landlord attended the settlement conference or was excused from attending for good cause, the penalty otherwise awarded under this subsection shall be reduced by \$50.

[8030 Amended 10/11/90; Effective 10/30/90]

SUBCHAPTER D
RULES FOR HEARINGS AND APPEALS

8040. Hearing Examiner

- (a) The following persons may serve as a hearing examiner at a hearing under this subchapter:
- (1) A Board member.
 - (2) A management employee of the board.
 - (3) One or more hearing examiners employed by the Board on a part-time or full-time basis.
 - (4) A staff attorney of the Board.
- (b) The functions of the hearing examiner shall be performed in an impartial manner.

8041. Powers of Hearing Examiner

The hearing examiner shall have the right to:

- (a) Administer oaths and affirmations.
- (b) Cause the Board to issue subpoenas for the attendance of persons to testify and to produce books, records and other papers.
- (c) Rule on offers of proof and receive relevant evidence.
- (d) Control the course of the hearing.
- (e) Rule on procedural requests.
- (f) Render decisions on complaints.
- (g) Take other action authorized by the rules and regulations adopted by the Board.
- (h) To initiate civil action to enforce any order made in the exercise of the foregoing powers.

8042. Notice of Hearing

At least ten days prior to the hearing, notice shall be mailed to the landlord, and to the complainant, of the date, time, and place of the hearing.

Any interested party may examine the contents of the complaint file at the hearings department at a time mutually convenient to the hearings department and the party, by prior arrangement.

[8042 Adopted 2/14/80; Effective 2/17/80]

8043. Continuances

Continuances for any hearing conducted pursuant to this chapter shall be granted only for good cause. Continuances may be granted in the discretion of a hearing examiner, the supervisor of hearing examiners, or the Administrator. Requests for continuances shall be made as soon as the necessity for a continuance is known to a participant, but in no event less than 72 hours before the scheduled hearing.

The request must be written, and contain acceptable alternative dates and an explanation of what efforts were made to ascertain the position of the other parties regarding the requests for a continuance. The hearing examiner, hearings department supervisor, or administrator to whom the request is directed may require the requesting party to provide supporting factual information in a declaration executed under penalty of perjury. Copies of the written request must be sent immediately to all other parties and proof of such service must accompany the written request filed with the Board.

[8043 Adopted 2/14/80; Effective 2/17/80]

8044. Evidence Rules

The hearing need not be conducted according to technical rules of evidence and witness. Any relevant evidence shall be considered if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Unduly repetitious or irrelevant evidence shall be excluded upon order by the hearing examiner.

[8044 Adopted 2/14/80; Effective 2/17/80]

8045. Order of Proceedings

The hearing on a complaint shall ordinarily proceed in the following order:

- (a) Official notice, receipt into evidence and consideration of all pertinent documents derived from the official records of the Board. The supporting documentation submitted with a complaint is not admissible until properly authenticated and will not be deemed competent absent a proper foundation.
- (b) Presentation by or on behalf of complainant, including presentation of documentary evidence and foundation for such evidence, testimony of the complainant, and any witnesses on behalf of the complainant.
- (c) Presentation by or on behalf of the respondent to the complaint, including presentation of documentary evidence and foundation for such evidence, testimony of the respondent, and any witnesses on behalf of the respondent.
- (d) Rebuttals by complainant and respondent as allowed in the discretion of the hearing examiner.

[8045 Adopted 2/14/80; Effective 2/17/80]

8046. Speaker's Presentation

Each speaker's presentation shall be to the point and shall be as brief as possible; visual and other materials may be used as appropriate.

[8046 Adopted 2/14/80; Effective 2/17/80]

8046.5 Right of Assistance

All parties to a hearing may have assistance in presenting evidence and developing their positions from attorneys, legal workers, recognized tenant organization representatives, landlord association representatives, or any other persons designated by said parties.

[8046.5 Adopted 2/14/80; Effective 2/17/80]

8047. Hearing Record

The hearing examiner shall keep on file an official record, which shall constitute the exclusive record for decision, and which shall include:

- (a) A copy of the complaint and supporting documentation submitted with it.
- (b) Any response to the complaint.
- (c) Exhibits, papers, and documents offered either before or during the proceeding.
- (d) A list of participants present.
- (e) A summary of all testimony accepted in the proceedings.
- (f) A statement of all materials officially noticed.
- (g) All findings of fact and conclusions of law.
- (h) All final or recommended decisions, orders or rulings.

[8047 Adopted 2/14/80; Effective 2/17/80]

8048. Hearing Record Public

The hearing record is a public record and may be inspected by any person. Any person may request and receive copies of the hearing record or documents therein upon payment to the Board of the costs of making such copies.

8049. Quantum of Proof

No complaint shall be granted unless supported by the preponderance of the evidence submitted at hearing.

8050. Decision

After the closing of the record of the hearing, the hearing examiner shall render a written decision supported by findings of fact and conclusions of law.

[8050 Adopted 11/4/82; Effective 12/4/82]

8051. Notification of Decision

The hearing examiner's decision shall notify the parties to the hearing of the effect of the decision and of their appeal rights.

8052. Time for Appeal

Within ten days after the date of the decision of the hearing examiner, any person aggrieved by the decision of the hearing examiner may appeal to the Board. An appeal may thereafter be accepted in the discretion of the Board Administrator through the twentieth day following issuance of the hearing examiner decision, but only upon a written showing of good cause included with the appeal. In the event that no appeal is filed during the twenty days after the date of the hearing examiner decision, the hearing examiner decision shall be the final decision of the Board.

8053. Aggrieved Person

The following persons may appeal a decision of the hearing examiner to the Board:

- (a) The complainant.
- (b) The landlord of the complainant.
- (c) Any co-tenant, subtenant, or other co-occupant of the subject unit whose rights may be affected by the decision.
- (d) Any Board member.
- (e) The Board Administrator, when substituted as complainant during the pre-hearing process.

8054. Appeal Filing Procedures

Any person wishing to appeal the decision of a hearing examiner must do so on the form approved by the Board. The appeal shall set forth the specific grounds upon which the appeal is based. The Board may consider the hearing examiner decision final with respect to matters not timely raised in the appeal. Any person filing an appeal shall file along with the original completed appeal form, one extra copy.

8055. Determination

As soon as practicable after the filing of the appeal, the Board shall affirm, reverse or modify the decision of the hearing examiner. The Board may also remand the matter to the hearings department for the further consideration of factual issues. In that event, the Board will finally resolve all issues that may be resolved apart from the remand, and any appeal from the remand proceeding will be limited to the issues addressed in the remand.

8056. Staff Report

At least ten days prior to the date set for Board action a staff report shall be prepared on the appeal and shall be available for public inspection. The staff report shall contain a written recommendation to affirm, reverse or modify the decision of the hearing examiner or to remand the matter, or any portion thereof, to the hearings department for further proceedings.

8057. Notice of Time Set for Board Action

At least ten days prior to the date set for Board action, all parties shall be notified by mail of the date, time and place set for Board action on the appeal. A copy of the staff report shall be mailed along with the notice.

8058. Appeals Calendar

The appeal shall be decided on the Board's consent calendar. The parties to the appeal will only be allowed to address the Board upon a two-thirds vote of the Commissioners present. Any party may submit written information to the Board up until noon of the Monday preceding the date set for Board action on the appeal.

8059. Decision

Unless the Board determines that it should have a de novo hearing, the Board's decision shall be based upon the hearing record before the hearing examiner, and any argument heard by the Board. If the Board determines to hold a de novo hearing, the hearing shall be conducted in the manner set forth in this subchapter governing the hearing before the hearing examiner.

8060. New Evidence on Appeal

A party aggrieved by the decision of the hearing examiner who appeals therefrom shall not be entitled to offer any evidence to the Board which was not offered or received at the hearing before the hearing examiner, unless 1) the party obtained the evidence subsequent to the hearing, and could not have obtained the evidence sooner through the exercise of reasonable diligence, and 2) the evidence bears directly on a material dispute of fact. A party submitting new evidence must explain, in a written request, how the circumstances satisfy the requirements of this regulation. The Board may apply or waive the requirements of this regulation in its discretion.

8061. Findings

The Board's decision to affirm, reverse or modify the decision of the hearing examiner shall be supported by written findings of fact and conclusions of law. Should the Board remand the matter to the hearings department for further hearings, only a notice of remand shall be issued, and its decision and findings shall not be issued until the remand and any appeal therefrom have concluded.

8063. Finality of Appealed Decision

If the hearing examiner's decision is timely appealed, the Board's decision to affirm, reverse or modify the hearing examiner's decision shall become final at the time of Board action granting or denying the appeal.

8064. Stay

In the event of a timely appeal to the Board, the decision of the hearing examiner shall be stayed pending determination by the Board on appeal.

8065. Board Action in Lieu of Reference to Hearing Examiner

The Board on its own motion may hold a hearing on a complaint under this subchapter without the complaint first being heard by a hearing examiner.

[8065 Amended 11/09/2000; Effective 11/25/2000]

8066. Time of Decision

Pursuant to section 1809(b)(1), the Board shall take final action on any complaint for excess rent within one-hundred and twenty (120) days following the date of the initial filing of the complaint unless good cause is shown or the parties otherwise agree. This regulation is declarative of existing law and practice and does not impose any new requirements or rights, or limit any existing requirements or rights under the Rent Control Law.

[8066 Adopted 01/13/11; Effective 01/22/2011]

[8066 Amended 03/10/11; Effective 03/17/2011]

8070. Enforcement of Board Decision

- (a) Effective Date: Unless stayed or restrained by a court of competent jurisdiction, a Board decision shall take effect 30 days after the date upon which the decision becomes final.
- (b) Authorization to Recoup Excess Rent, Interest, and penalties: Upon a determination that a landlord or landlords are liable to a complainant for any amount of excess rent, interest or penalties, the hearing examiner or Board shall specify in their decision that the complainant is entitled to withhold payment of any rent which would otherwise be due and payable following the effective date of the decision, as a means of recouping the amount to which complainant is entitled, until the amount of rent withheld, using the current lawful rent as a measure, is equal to the amount of liability imposed by the decision.
- (c) Effect of Decision: Pursuant to the decision of the California Supreme Court in McHugh v. Santa Monica Rent Control Board, the Board decision imposing liability in a specific amount and authorizing the withholding of rent shall, unless stayed or until vacated by a court of competent jurisdiction, be given collateral estoppel effect in any judicial proceeding, other than a proceeding under Code of Civil Procedure Section 1094.5 challenging the specific decision of the Board. After its effective date, the Board decision, unless stayed or vacated in a proceeding pursuant to Code of Civil Procedure Section 1094.5, has the following legal effect:
- (1) Defense to Nonpayment Ground for Eviction: As provided in section 1806(e) of the Rent Control Law, the Board decision shall constitute a defense to any unlawful detainer action predicated on nonpayment of rent and filed against a complainant who has been authorized to recoup the amount of the award as long as the entitlement to recoup continues;
- However, the issuance of an administrative order shall not be a prerequisite or any way a requirement before a tenant may assert a right to offset previous overpayments of rent as a defense in an eviction proceeding premised on nonpayment of rent.
- (2) Judicial Enforcement of Decision: A complainant who is no longer a tenant of the subject unit and for whom the withholding remedy is consequently ineffective may seek judicial enforcement of the Board decision from a court of competent jurisdiction pursuant to Section 1811 of the Rent Control Law. In appropriate cases, the Board may independently seek judicial enforcement of its order with respect to a complainant who is no longer the tenant of a subject unit. When a tenant vacates a unit prior to withholding the entire amount, the landlord must pay the balance of the award within two weeks thereafter.
- (d) Recoupment by the tenant and compliance with the decision of the Board shall be presumed to occur in the normal course of events. A landlord may discharge the liability imposed by a Board decision by not objecting to recoupment for the necessary period of time, or by paying to the complainant the entire amount, or remaining amount. Should the landlord opt for the latter course of action, compliance may be established by a document freely executed by the complainant and acknowledging receipt of payment in full.
- (e) Board Enforcement: Any post-decision agreement between the complainant and landlord reducing the amount of liability already decided may be deemed void as contrary to public policy and shall not prevent the Board from enforcing the decision as to the entire amount.

- (f) Rent Increases During Recoupment Period: A landlord found liable under a Board decision shall not be deemed in compliance with the Rent Control Law with respect to the subject unit until the entire period of withholding of rent by the complainant has been completed, or the entire amount of liability is otherwise discharged. Until that time, the landlord, including any successor in interest, shall be prohibited from implementing any increases in the maximum lawful rent which could otherwise be implemented as to the subject unit.

[8070(c)(1) Amended 05/6/04; Effective 06/03/04]

[Chapter 8 Adopted 9/6/79; Effective 9/18/79]

[Chapter 8 Amended 9/1/83; Effective 9/10/83]

[Chapter 8 Amended 4/12/90; Effective 4/23/90]

[Chapter 8 Amended 2/11/93; Effective 4/2/93]

[Chapter 8 Amended 10/18/93; Effective 11/10/93]

[8065 Amended 11/09/2000; Effective 11/25/2000]

[8010(b)(2)(5),(c)(1)(2)(3)(4)(5),(d)(1)(2)(3)(4) Amended 12/7/00; Effective 12/30/00]

[8010(b)(1)(2)(4), (c)(2), (d)(2), (e), (f), (g) Amended 01/10/02; Effective 01/26/02]

[8020(n) Amended 01/10/02; Effective 01/26/02]

[8070(c)(1) Amended 05/6/04; Effective 06/03/04]

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[8066 Amended 03/10/11; Effective 03/17/2011]