

CHAPTER 15

HEARING PROCEDURES

SUBCHAPTER A

[Reserved]

SUBCHAPTER B

[Reserved]

SUBCHAPTER C

SUBPOENAS

15030. Statement of Purpose

This subchapter contains implementing regulations for Charter Amendment Section 1803(f)(11). Subpoenas are often indispensable in Rent Control Board hearings since reliable information relevant to the determination of lawful rent levels may be otherwise unobtainable. Persons seeking the issuance of subpoenas and witnesses subject to those subpoenas are entitled to know their legal rights and obligations.

The purposes of this subchapter are, therefore, twofold;

- (1) to provide tenants and landlords, as well as the Board and its hearing examiners, with the means to compel attendance of material witnesses and production of relevant documents or other physical evidence at administrative hearings conducted by the Rent Control Board or its hearing examiners; and
- (2) to establish standards and procedures for the administration of the subpoena power which will prevent abuse by any party.

15031. Subpoena Forms

Any person seeking issuance of a subpoena under this subchapter must do so on an application form approved by the Board. Subpoena forms adopted by the Board shall contain a clear statement of the rights and obligations of both the party on whose behalf the subpoena is issued and those of the subpoenaed witness. This statement shall, at a minimum, advise the subpoenaed witness of the right to contest the sufficiency of the period of notice to appear which he or she has received, the right to contest the relevancy of the documents or other physical evidence which have been demanded, and the right to receive attendance and mileage fees in specified amounts.

15032. Procedure for Obtaining Subpoena or Subpoena Duces Tecum

Any landlord or tenant who is a party to a hearing may request issuance of a subpoena prior to commencement of the hearing by following the procedures set forth in subsections (a) through (d). Upon signing a declaration stating that he or she is authorized to act on behalf of a party to a hearing, an attorney or authorized representative may request issuance of a subpoena.

(a) Application for Subpoena

A party seeking issuance of a subpoena by the Board must complete an application form by filling in all required information, and must declare that he or she is a party to a particular administrative proceeding pending before the Board or one of its hearing examiners. If a subpoena duces tecum (a request for production of documents or other physical evidence) is requested, the applicant must complete the declaration portion of the application, stating under penalty of perjury that good cause exists for requiring the production of the matters and things described in such subpoena, specifying the exact matters or things desired to be produced, setting forth in full detail the materiality thereof to the issues involved in the case, and stating that the witness has the desired matters or things in his possession or under his control.

(b) Subpoena Issuance; Review and Signature

The form must then be submitted for review and signature by the Administrator, General Counsel, or Hearings Supervisor. The subpoena shall be reviewed for completeness prior to issuance. The relevancy or appropriateness of a subpoena may be contested at the hearing, as set forth in Sections 15035 and 15036 below.

(c) Service of Subpoena

A witness shall be afforded reasonable notice of the hearing at which attendance or production of documents or other physical evidence is compelled. A subpoena must be *personally* served upon the witness at least five days prior to the date of the hearing. If the subpoena is for personal records as set forth in regulation 15032.5 below, the subpoena must be personally served at least fifteen (15) days prior to the date of production. Service may be made by any person over eighteen years of age who is not a party to the hearing.

(d) Witness Fees and Mileage

Witnesses subject to subpoenas issued by the Board shall be entitled to attendance and mileage fees payable in the manner and in the amounts specified by the California Code of Civil Procedure.

[15032(c) amended 7/10/03; effective 7/25/03]

15032.5. Subpoena Duces Tecum for Personal Records

When a subpoena duces tecum is sought for "personal records" by a landlord or tenant who is a party to a hearing, in addition to the procedures set forth in regulation 15032, the following shall apply.

(a) Personal Records

"Personal records" are those documents or electronic data pertaining to a consumer which are maintained by a current or former employer, physician, psychotherapist, dentist, ophthalmologist, optometrist, chiropractor, physical therapist, acupuncturist, podiatrist, veterinarian, veterinary hospital, veterinary clinic, pharmacist, pharmacy, hospital, medical center, clinic, radiology or MRI center, clinical or diagnostic laboratory, state or national bank, state or federal association (as defined in California Financial Code Section 5102), state or federal credit union, trust company, title insurance company, underwritten title company, escrow agent licensed or exempt from licensing pursuant to California Financial Code section 1700 et seq., attorney, accountant, institution of the Farm Credit System (as specified in United States Code, Title 12, Section 2002), or telephone corporation, or private or public preschool, elementary school, secondary school, or postsecondary school as described in California Education Code Section 7624.

(b) Consumer

"Consumer" means any individual, partnership of five or fewer persons, association, or trust which has

transacted business with, or has used the services of, any of the personal records holders listed in subparagraph (a) above.

(c) Notice to Consumer

At least three days prior to serving the subpoena duces tecum for the production of personal records, the subpoenaing party shall serve on the consumer whose records are being sought a copy of the subpoena duces tecum, including the application, and a Notice to Consumer on a form provided by the Rent Control Board. The notice shall inform the consumer that personal records are being sought from the personal records holder identified in the notice, that the records may be protected by a right of privacy, and, if the consumer objects to the records being disclosed by the records holder, the consumer shall file a written objection, or motion to quash or modify the subpoena in the Rent Control Board proceeding and shall serve the written objection or motion on all parties in the proceeding not less than seven (7) days before the date for production. The notice shall be accompanied by a proof of service.

(d) Service

Along with the subpoena and application for production of the personal records, the subpoenaing party shall do either of the following: (1) serve upon the personal records holder a proof of service showing compliance with the requirements of subparagraph (c) above; or (2) furnish the personal records holder a written authorization signed by the consumer to release the records. If the consumer is represented by an attorney in the administrative proceeding, service of the Consumer Notice and accompanying documents may be made on the attorney.

(e) Production of Records Required

Notwithstanding the filing of objections to or a motion to quash or modify a subpoena duces tecum for personal records, the personal records holder shall produce the records requested in the subpoena and application. If an objection or motion to quash or modify is filed, the personal records shall be sealed until the hearing examiner hears the objections or the motion to quash or modify the subpoena.

(f) Telephone and Tax Records

A subpoena duces tecum for telephone records and income tax returns shall not be valid or effective unless it includes a consent to release the records, signed by the consumer whose records are requested.

(g) Medical and Attorney Records

A subpoena duces tecum for physician, psychotherapist, dentist, ophthalmologist, optometrist, chiropractor, physical therapist, acupuncturist, podiatrist, pharmacist, pharmacy, hospital, medical center, clinic, radiology or MRI center, clinical or diagnostic laboratory, or attorney records shall not be valid or effective unless it includes a consent to release the records, signed by the consumer whose records are requested.

[15032.5 adopted 7/10/03; effective 07/25/05]

15033. Use of Subpoena by Rent Control Board or Hearing Examiner

The Board or its hearing examiners may compel the attendance of witnesses in order to examine them under oath or to compel production of documents or other physical evidence. In such cases, the requirements set forth in regulation 15032(b) through 15032(d) and regulation 15032.5 shall apply.

[15033 amended 7/10/03; effective 07/25/03]

15034. Geographical Reach of Subpoenas

A witness is not obliged to attend as a witness outside of the county in which he or she resides, unless the distance from the principal place of residence of the witness to the hearing location is less than one hundred fifty miles.

15035. Motion to Quash Subpoena

A witness may contest a subpoena by making objections to the subpoena or making a motion to quash the subpoena if it is unreasonable or oppressive. The objections to or motion to quash or modify the subpoena duces tecum must be served on all parties in the administrative proceeding and filed at least seven (7) days prior to the date for production. If a party is represented by an attorney in the proceeding, service of the motion may be made on the attorney. In deciding a motion to quash, the hearing examiner shall consider all relevant factors, including but not limited to the purpose of the information sought, the effect the disclosure will have on the parties and the hearing, the nature of the objections urged by the party resisting disclosure, and the ability to make an alternative order granting partial disclosure, disclosure in another form, or disclosure only in the event the party seeking the information undertakes certain specified burdens which are just under the circumstances. When possible, the hearing examiner shall impose partial limitations pursuant to regulation 15036 rather than an outright denial of production. This section neither adds to nor detracts from the right of a witness to institute a court proceeding to quash a subpoena.

[15035 amended 7/10/03; effective 07/25/03]

15036. Protection of Witnesses; Modification of Subpoenas

Notwithstanding issuance of a subpoena pursuant to Section 15032 or 15033, the Board and its hearing examiners shall make any remedial orders necessary, including but not limited to the following examples. In the event that a witness disobeys a subpoena after having received untimely notice to appear, a continuance may be granted upon a showing of good cause by the party seeking the testimony of the absent witness. The scope of a subpoena duces tecum may be limited if it appears that items of evidence not relevant to the proceeding have been included or that the subpoena does not sufficiently specify the evidence to be produced, or if the items requested violate the party's privacy rights. In determining the limitations, the hearing examiner and Board shall consider all relevant factors, including but not limited to the purpose of the information sought, the effect disclosure will have on the parties and on the hearing, the nature of the objections urged by the party resisting disclosure, the ability to obtain disclosure in another form, or disclosure only in the event the party seeking the information undertakes certain specified burdens which are just under the circumstances. Remedial orders may be made on the motion of the Board or hearing examiner, or upon motion by the witness, as well as upon the motion of a party.

[15036 amended 7/10/03; effective 07/25/03]

15037. Enforcement of Subpoenas

In the event that no motion to quash has been granted pursuant to subsection 15035 nor remedial order issued pursuant to subsection 15036, where a witness fails to obey a subpoena issued by the Rent Control Board (except upon constitutional grounds), the Board may adopt a resolution embodying the facts of such disobedience or refusal to testify and directing the Chairperson of the Rent Control Board to make complaint in the Municipal Court for the Santa Monica Judicial District against such person pursuant to the Santa Monica Municipal Code. If the witness cures such disobedience within five days after adoption of such a resolution, the Board shall withdraw that resolution. In no event shall such a resolution be adopted where the subpoena was not served upon the witness at least five days prior to the hearing date, as set forth in subsection 15032(c) above.

[Chapter 15 Adopted 5/16/85; Effective 6/2/85]

[15032 Amended 7/10/03; Effective 07/25/03]

[15032.5 Adopted 7/10/03; Effective 07/25/03]
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