

**PETITION FOR DETERMINATION OF
TENANT(S) NOT IN OCCUPANCY
AND
NEW MAXIMUM ALLOWABLE RENT**

INSTRUCTION SHEET AND GENERAL INFORMATION

If you own a unit which is not being used as the tenant(s)' usual residence of return, you may file a petition after serving notice on the tenant. If the petition is granted, the Board will determine the new Maximum Allowable Rent that may be implemented after you give proper written notice to the tenant.

Summary of the steps for filing a Petition for Determination of Tenant(s) Not In Occupancy:

1. Serve the tenant(s), occupant(s) and tenant's agent(s) at all known addresses with a written notice that you intend to file a Petition for Determination of Tenant(s) Not in Occupancy and the bases for that petition. This must be done between 10 and 30 days prior to filing the petition.
2. Complete a Proof of Service Form.
3. File the Petition, with a copy of the Notice(s), the Proof of Service form(s) and documentary evidence.

Detailed instructions for each step follow.

If you have questions, please call the Rent Control Board at 458-8751 and speak with an Information Coordinator.

The Board's web site at www.smgov.net/rentcontrol may also be helpful.

STEP 1: NOTICE TO TENANT

- **Serve the tenant(s), occupant(s) and agents for the tenant(s) with a written notice that you intend to file a Petition for Determination of Tenant(s) Not in Occupancy.**

- You may do this in one of two ways:

Use the “Notice to Tenant(s) of Owner’s Intention to File Petition for Determination of Tenant(s) Not in Occupancy” provided in this packet,

OR

Write your own letter. The letter must: 1) State your intention to file a Petition for Determination of Tenant(s) Not in Occupancy and 2) Set out the bases for your claim.

- The notice or letter must be sent or delivered to all known addresses (including the subject unit) for the tenant.
- **If you are serving the notice by mail, first class mail is sufficient for the required service. Certified-return-receipt mail is not accepted as service unless accompanied by a signed return receipt from the tenant.**

- **State all the reasons on your notice for your conclusion that the unit is not being used as the tenant(s)’ usual residence of return.**

- Whether you use the notice form or write your own letter, it is essential that you specifically and clearly state the reasons why you believe the unit is not being used as the tenant(s)’ residence.
- Refer to Regulation 3304 for an explanation of the bases for such a claim.

- **Keep a copy of the notice you serve on the tenant(s), occupant(s) and agent(s).**

- You will need to submit a copy of the notice/letter you served on the tenant(s), occupant(s) and agent(s) with your petition. Make a copy of it before you serve it. When copying the notice form, be sure you copy both sides.

STEP 2: PROOF OF SERVICE

- **Complete a Proof of Service form after you have served your notice or letter. A completed Proof of Service is required as part of your petition and is proof that you have served the notice.**
 - Two kinds of Proof of Service forms are attached. Choose the correct form and fill it out.
 - If you **mailed** the notice or letter, fill out the *Proof of Service **By Mail*** form.
 - If you **served** the notice by giving it personally to the person, fill out the *Proof of Service by **Personal Service*** form
 - How many Proofs of Service do I need to use?:
 - If you served all notices in the same manner, (e.g., mailed all your notices), on the same day, you need only one Proof of Service. List all of the persons served and the addresses on the form. If you need more room, attach an additional page.
 - If you served notices **on more than one date**, fill out a separate Proof of Service **for each date** you either mailed or served the notice.
 - If you served notices both by mail and by personal delivery, fill out a separate Proof of Service form for each method of service.
 - Attach the completed Proof of Service form(s) to your copy of the notice form or letter you served on the tenant(s).
 - When you submit your Petition, both the original Proof of Service and a copy of the notice or letter must be attached to the petition.

STEP 3: PETITION

➤ Timelines

You must submit the petition to the Rent Control Board offices **at least ten days but not more than thirty days** after the date you serve the notice(s)/letter(s) on the tenant(s). If you do not file within thirty days following the service of the notice(s)/letter(s), you must serve the notice(s) again and file within thirty days of that notice.

➤ Filling out the Petition

- **Complete Parts I – III and V.** In **Part IV** complete **either** Section A or B, Section C if applicable, and Section D. Please type or print.
- **Page 2:** Include all names, addresses and phone numbers of all tenants (including the subject unit) and all known occupants of the unit, as well as the names, addresses and phone numbers of all agents. *Failure to disclose a known address will result in the denial of the petition.*
- **Page 3:** State all the bases on which you claim the tenant(s) do not use the unit as their usual residence of return. Refer to Regulation 3304(g). Be sure you include every reason you listed on the Notice(s)/letter(s) that you want the hearing officer to consider.
- **Page 4:** Use **one** of two methods to assist the Board in determining a new maximum allowable rent if the petition is granted. Refer to Regulation 3304(i). Complete **Section A** if comparable units on the property (same number of bedrooms) were re-rented in the last three years. Complete **Section B** if no comparable unit(s) on the property were rented in the three-year period. In this case, the new rent will be the median rent for units with the same number of bedrooms in the area of the City in which the property is located that have received vacancy increases between January 1, 2017 and December 31, 2019
- . See enclosed *Median MARS of Units with Vacancy Increases*.
- **Page 5 (top): Only complete Section C** if you believe the rent determined in either Section A or B should be adjusted based on certain physical conditions of the unit or property, or amenities provided. See Regulations 3304(i)(4) and 4104(D)(4).
- **Page 5 (Section D):** List the rent you believe appropriate based on the Regulation.
- **Page 5 (bottom):** Fill out and sign the Declaration. In the declaration you are certifying, under penalty of perjury, that everything in the petition is true, that the unit is not subject to any uncorrected citations or notices of violation of any state or local housing, health or safety laws issued by a governmental official or agency, and that the unit is in substantial compliance with the provisions of the Santa Monica Rent Control law and regulations.

STEP 4: DOCUMENTS TO PROVE YOUR CLAIM

- It is crucial to your case to document all reasons for your contention that the tenant(s) are not using the unit as their usual residence of return. Attach every document that supports your claim. Some possible examples are grant deeds, evidence of homeowner's exemptions or utility bills for another residential property, or a business license for this location. See Regulation 3304 for more information.
- If you complete Part IV, Section A for comparable units, attach two copies of leases/rental agreements and proof of payment for each unit.
- If you complete Part IV, Section C, and request an adjustment in the proposed rent, you must include evidence (i.e., photographs, leases detailing amenities, invoices for completed work, etc.). See Regulation 4104(D)(4) for more information.
- You may attach declarations supporting your claim. A declaration is a written statement from a potential witness signed under penalty of perjury. Be aware that **declarations alone may not be sufficient evidence at the hearing**. In many cases, the person who wrote the declaration **should appear** at the hearing to testify and be subject to cross-examination.

STEP 5: SUBMITTING THE PETITION

- Submit the petition to the Rent Control offices in person or by mail. The following attachments must accompany the petition:
 - ✓ The original petition (plus two copies)
 - ✓ All documents supporting your contention that the tenant(s) do not use the unit as their usual residence of return. (2 copies)
 - ✓ All documents supporting requested new Maximum Allowable Rent. (2 copies)
 - ✓ Original Proof of Service form(s)
 - ✓ Copy of notice/letter to tenant(s)

WHAT HAPPENS AFTER YOU SUBMIT THE PETITION

➤ Staff Review of the Petition

- Once the petition is accepted for filing, Board staff will determine whether the facts in the petition, together with the attached documentary evidence, state a “prima facie” case. A “prima facie” case consists of sufficient evidence to establish your claim. Such evidence may be later contradicted and overcome by the tenant’s evidence presented at hearing.
- If the petition has insufficient evidence to prove the tenant(s) do not use the unit as their residence, the petition will be dismissed. You may appeal the dismissal or refile later if you obtain more evidence.

➤ Petition sent to tenant for response

- If the petition is sufficient to establish a prima facie case, the Board will send a copy of the petition to the tenant(s) and occupant(s) along with a tenant response form.
- Tenant responses will be verified.
- If the tenant(s) respond that they do not contest the petition, no hearing will be held. A written decision will be issued establishing a new Maximum Allowable Rent. This increase may only be collected after you receive a final Board decision and give proper written notice to the tenant.
- If the tenant(s) contest the petition or do not return the response form, a hearing will be scheduled. All parties will receive written notice of the time and place of hearing.

HEARING AND APPEAL

➤ Hearing

- You must attend the hearing to prove your case.
- Testimony will be taken under oath subject to cross-examination. For further information regarding what happens at Rent Control Board hearings, see “How to Prepare for a Rent Control Hearing”.
- Following the hearing, the hearing officer will issue a written decision.
- If the decision concludes that the tenant(s) do not use the unit as their usual residence of return, the decision will set a new maximum allowable rent.
 - You may not notice or increase the rent until you receive a final Board decision authorizing you to do so.
 - You must give the tenant(s) proper written notice of the authorized increase.

➤ Appeal

- Either party may appeal the Hearing Officer’s decision to the Rent Control Board.
- If an appeal is filed, any increase granted in the Hearing Officer decision may not be implemented (or noticed) until the Board issues a final decision.

SANTA MONICA RENT CONTROL BOARD

1685 Main Street, Santa Monica, CA 90401

(310) 458-8751

www.smgov.net/rentcontrol

MPP# _____

Current MAR: \$ _____
For office use only

Petition N- _____
:

**Petition For Determination of
Tenant(s) Not in Occupancy
and
New Maximum Allowable Rent**
[Rent Control Board Regulation 3304]

Property Address: _____ Unit # _____ Current Rent \$ _____

▶▶ You must submit the original petition (with **2 copies**), all supporting documents (**2 copies**), Notice to Tenant (**one copy**) and original Proof of Service. ◀◀

I. General Information ♦ Please Print Or Type ♦ ♦ Attach Extra sheets if necessary ♦

A. Owner

_____ Name

_____ Street City Zip

Daytime telephone (_____) _____

B. Attorney or Other Authorized Representative for this petition

_____ Name

_____ Street City Zip

Daytime telephone (_____) _____

C. Manager or Management Company

_____ Name

_____ Street City Zip

Daytime telephone (_____) _____

II. Tenant(s) Occupancy

A. A copy of the current rental agreement for this unit should be submitted with this petition.

B. Tenant(s)' name, addresses & telephone #s*

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

C. Name, addresses & telephone #s of all known occupants*

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

D. Name, addresses & telephone #s for agent(s) of tenant(s)

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

E. Date subject tenancy began _____

F. Date owner believes tenant ceased to reside in unit _____

G. Is the unit currently occupied & by whom? _____

H. Current use of unit _____

*Failure to disclose all known addresses will result in denial of the petition.

IV. Information For Determination of New Maximum Allowable Rent

Number of Bedrooms in Subject Unit: _____

.....

Complete either Section A or B, whichever applies, Section C if applicable, and Section D
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Section A. Rents for Comparable Units If there are comparable units (same number of bedrooms) at the property as the subject unit that have been **re-rented** in the last three years, complete the table below. List all re-rented comparable units and their current maximum allowable rent. If a unit was rented more than once in the three year period, **list only the most recent rental.**

Unit Number	Number of Bedrooms	Current Maximum Allowable Rent	Date Rented	Has a Vacancy Registration Form been filed? (Yes or No)

Attach two (2) copies of leases/rental agreements and proof of rent payment such as copies of rent checks/receipts for each unit. (Attach additional sheets if necessary to list all units.)

The average of the current maximum allowable rents of the units listed above is \$_____.

.....

Section B. Median Rents by City Area If Section A does not apply, the Board will determine a new maximum allowable rent based on the median rent of units with the same number of bedrooms in the property’s geographical area that were rented between January 1, 2017 and December 31, 2019.

Refer to the enclosed map of City Areas and Median MARS of Units with Vacancy Increases to determine the median rent that applies to this unit.

The median rent for units with the same number of bedrooms in the unit’s City Area is \$_____.

If you believe the rent from Section A or Section B should be higher or lower due to the unit's amenities and/or physical condition, **complete Section C.**

Section C. Adjustment of Maximum Allowable Rent

Explain the reasons why you believe the rent should be adjusted, such as physical condition of units or property, amenities or lack thereof. See Regulation 4104(D)(4) for examples. Attach additional sheets if necessary.

Attach two (2) copies of any documents to support your reasons.

Section D. Proposed Maximum Allowable Rent

If the tenant is found to be a tenant not in occupancy, the maximum allowable rent should be \$_____.

V. Declaration

I certify that this unit is not subject to any uncorrected citation or notice of violation of any state or local housing, health or safety laws issued by a government official or agency and is in substantial compliance with the Santa Monica Rent Control Law and Regulations.

I declare under penalty of perjury that the foregoing, including information on all attached sheets, is true and correct.

Executed this _____ day of _____, 20____

at _____, California.
location

Signature of Owner

Proof of Service
by
MAIL
[Board Regulation 3304]

I declare that I am over the age of eighteen years; that my address is:

_____ ; and

I served a true copy of the attached **Notice to Tenant(s) of Owner's Intention to File Petition for Determination of Tenant(s) Not in Occupancy (or letter)** on the ____ day of _____, 20__ by placing said copy in an envelope addressed to the following persons at the address(es) below:

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(Attach sheets for names and addresses for all additional persons served on the same day.)

The envelope was then sealed and postage fully prepaid. I deposited it in the United States mail at _____, California. There is delivery service by United States mail at the place so addressed and/or there is a regular communication by mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing including all attachments is true and correct. Executed this ____ day of _____ 20__, at _____, California.

city

Signature

Print or Type Name

Proof of Service
by
PERSONAL SERVICE
[Board Regulation 3304]

I declare that I am over the age of eighteen years; that my address is:

_____ ; and

I served a true copy of the attached **Notice to Tenant(s) of Owner's Intention to File Petition for Tenant(s) Not in Occupancy (or letter)** on the ____ day of _____, 20__ by **personally handing** a copy of the "Notice" (or letter) to the person(s) below on the ____ day of _____, 20__ , at the address(es) or location(s) listed below:

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(Attach sheets for names and addresses for all additional persons served on the same day.)

I declare under penalty of perjury that the foregoing including all attachments is true and correct. Executed this ____ day of _____ 20__, at _____, California.
city

Signature

Print or Type Name

SANTA MONICA RENT CONTROL BOARD
1685 Main Street, Room 202, Santa Monica, CA 90401
(310) 458-8751

AUTHORIZATION FOR REPRESENTATION
[Reg. 4001A(a)]

Petition for Determination of Tenant(s) Not in Occupancy
[Rent Control Board Regulation 3304]

I, (we) _____ am/are the owner(s) of

the residential rental property (properties) located at:

Address _____ Unit Santa Monica 9040

Address _____ Unit Santa Monica 9040

Address _____ Unit Santa Monica 9040

I hereby authorize:

Name of Representative

to act as my representative in proceedings on these matters. I authorize said representative to complete and execute under penalty of perjury the Santa Monica Rent Control Board **Petition for Determination of Tenant(s) Not in Occupancy** and any response forms, notices, or proofs of service on my behalf. My representative is also authorized to appear for me at any hearing on this matter. I understand my representative will receive all notices, decisions, and other Board correspondence and will be responsible for notifying me of same.

I agree to be bound by each of the entries made by said person in this matter to the same extent as if I had executed it myself under penalty of perjury.

Date

Signature of Owner

Type or Print Name

Date

Signature of Owner

Type or Print Name

Setting Rent Levels –Regulation 3304 (i)

(See enclosed copy of Regulations 3304, 4104(D)(4), Median MAR chart, and map of City areas.) Under regulation 3304, the Rent Board sets the new maximum allowable rent of a unit when it is determined that the tenant is not in occupancy. The new rent is set using the guidelines in regulation 3304(i) by one of two methods.

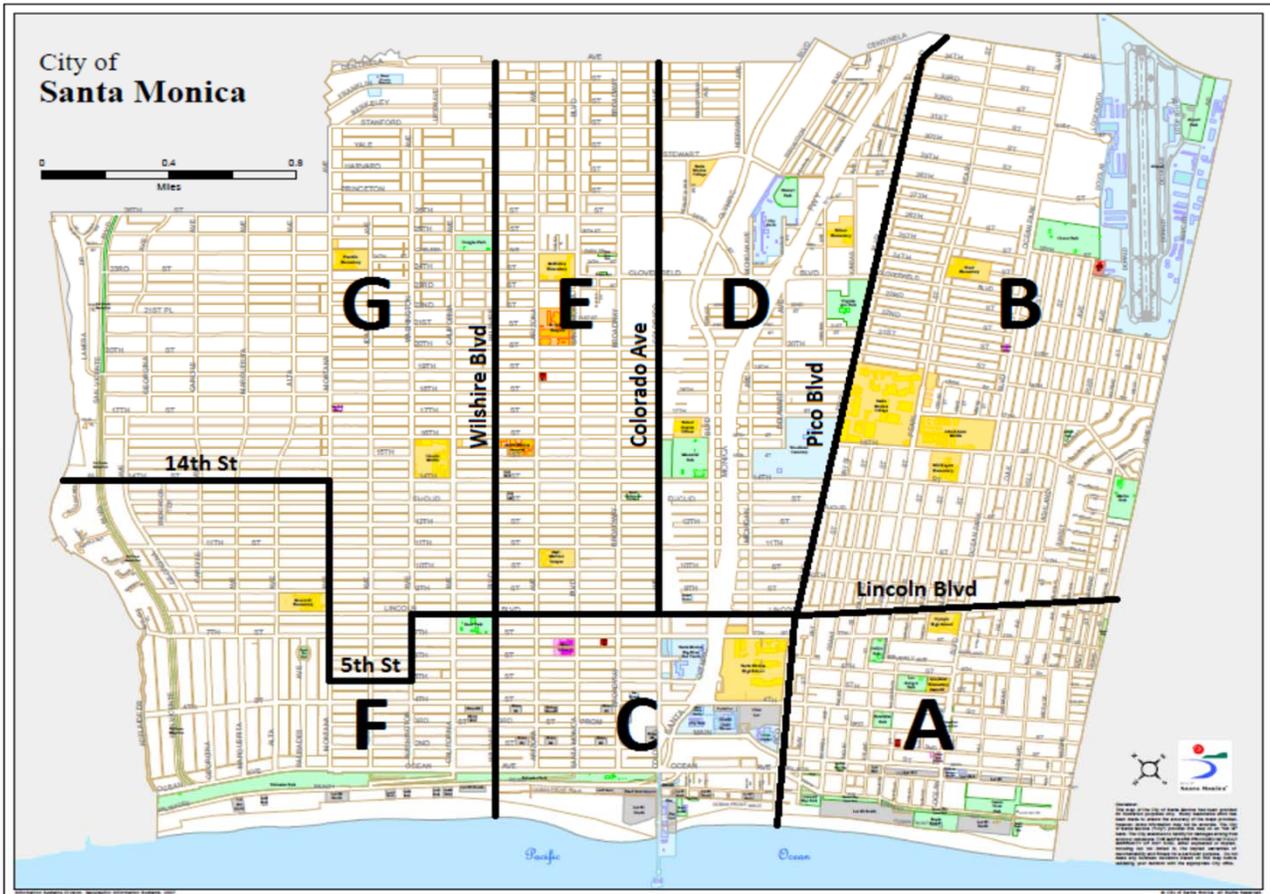
- (A) If comparable units on the property (same number of bedrooms) received a vacancy rent increase within three years prior to the date the petition was filed, the new rent will be the average current maximum allowable rents of those units. **OR**
- (B) If no comparable unit on the property received a vacancy increase within the three-year period, the new rent will be the median rent for comparable units (same number of bedrooms) which had vacancy increases in the area of the City in which the property is located. See enclosed Median MAR chart.

For either method, the rent may be adjusted upwards or downwards based on the amenities or physical condition of the unit and the property. See Regulations 3304(i) and 4104(D)(4).

**Median MARS of Units with Vacancy Increases
Between January 1, 2017 and December 31, 2019**

From: **The Impact of Market Rate Vacancy Increases
2019 Consolidated Annual Report**

Bedrooms	Area A	Area B	Area C	Area D	Area E	Area F	Area G
0	\$1,825	\$1,695	\$2,350	\$1,595	\$1,800	\$1,895	\$1,850
1	\$2,650	\$2,160	\$2,879	\$2,030	\$2,195	\$2,695	\$2,400
2	\$3,526	\$2,890	\$3,357	\$2,695	\$2,899	\$3,650	\$3,245
3+	\$4,350	\$3,600	N/A	\$3,695	\$4,000	\$4,587	\$4,485



These numbers will be used ONLY if there have not been market rate rentals of comparable units on the subject property.

AREA C-- There were no 3-Bedroom units rented in Area C during the last three years, so no median is reported.

REGULATION 4104(D)(4)

The hearing examiner or the Board, in the interests of justice, may make further adjustments either upward or downward for those property-specific or unit-specific characteristics or features, or lack thereof, which differentiate those units or properties from the general market on April 10, 1978. Only those characteristics or features that are quantitatively significant, measurable and affect monthly rent levels may be included.

- (a) These characteristics or features include, but are not limited to, the following: date of construction; swimming pool; dishwasher; air conditioning; balcony/patio; ocean view; parking (unsecured, secured, garage); building size (professionally managed); building maintenance; unit size; traffic exposure and externalities.
- (b) Cooking facilities, on-site laundry facilities, carpets and drapes were amenities that predominated for all units on April 10, 1978, regardless of neighborhood or number of bedrooms. Therefore, no upward adjustment shall be allowed for the presence of these amenities. However, the absence of such amenities may result in a downward adjustment.
- (c) In determining adjustments for specific characteristics and features, the hearing examiner or the Board shall apply the principle of diminishing relative value. With the addition of each unit- or property-specific characteristic or feature, the value of each may diminish, such that a point is reached where the addition of further amenities to a unit no longer influences the rental amount. ...

REGULATION 3304

3304. New Maximum Allowable Rent for Tenant Not In Occupancy

- (a) In accordance with the purposes of the Rent Control Law to regulate rents for tenants in order to help alleviate the impact of the serious housing shortage on tenants, a landlord may petition for a determination that the unit is not the tenant's residence. If a rental unit is kept for secondary occupancy, such as a vacation home, or purpose other than the tenant's residence, the landlord may petition the Board for a determination that the tenant is a "tenant not in occupancy." If a tenant is determined to be a "tenant not in occupancy," a one-time increase in the unit's maximum allowable rent shall be awarded in an amount determined pursuant to paragraph (i) below. If a unit has received a rent increase for this tenancy under Civil Code section 1954.53(d)(2), authorizing rent increases for sublessees, it is not eligible for an increase under this regulation.
- (b) Landlords who seek a determination that a tenant is a "tenant not in occupancy" under this regulation must file an original petition and two copies on a form provided by the Board.
- (1) The petition shall set forth a statement describing the basis or bases under paragraph (g) of this regulation for the petition, the names, all addresses, and all telephone numbers of all tenants and all known occupants of the unit(s), and the names, addresses, and telephone numbers of all agents who may represent the tenant(s) in connection with the unit. The failure to disclose a known address shall result in the denial of a petition.
- (2) The petition shall also set forth the proposed new maximum allowable rent for the unit and specify how it was calculated pursuant to paragraph (i) below. If the landlord contends that the unit's rent should be adjusted upwards or downwards under subparagraph (i)(4) below, a specific description of the reasons for the contention shall be included.
- (3) The petition shall be accompanied by two copies of supporting documentation which the petitioner intends to submit as evidence that the unit is not the tenant's residence and a copy of the written notice required by paragraph (c), along with an original proof of service of the notice, declaring under penalty of perjury that the written notice was served in the manner and upon the person or persons at the addresses specified therein. The petition shall also be accompanied by two copies of all documentation necessary to determine the new maximum allowable rent of the unit under paragraph (i) below.
- (c) Any landlord who intends to file a petition for a determination that a tenant is a "tenant not in occupancy" shall, at least ten (10) days but not more than thirty (30) days prior to filing the petition, provide written notice to all tenants and

occupants of the unit(s) of the intention to file the petition and the basis or bases of the intended petition. The written notice shall be served on the tenants and occupants at all known addresses and upon all known agents who may represent the tenant(s) in connection with the unit.

- (d) Upon submission of a petition under this regulation, an administrative staff member designated by the Board Administrator shall review the petition and supporting documents for the purpose of determining whether the petition and documents state a prima facie case under the criteria in paragraph (g) below. If the petition and supporting documents state a prima facie case, the Board shall mail a copy of the petition and a blank response form to the tenant(s) and occupant(s) of the unit.
 - (1) If the tenant returns the response form stating that she or he does not contest the assertions in the petition, the determination that the tenant is not a tenant in occupancy shall be granted by the Board Administrator or Hearings Supervisor in an expedited manner. The Board Administrator or Hearings Supervisor shall set the new maximum allowable rent pursuant to paragraph (i) below. Any party who wishes to contest the new maximum allowable rent set by the Board Administrator or Hearings Supervisor may do so by filing a request for hearing on a form provided by the Board. The request for hearing shall be filed within fifteen (15) days of the issuance of the determination of tenant not in occupancy and new maximum allowable rent. The hearing shall be held and a decision issued according to the procedures set forth in Board regulations 4007 through 4029 and 4039. If no request for hearing is filed within fifteen (15) days, the determination of the Board Administrator or Hearings Supervisor shall become final.
 - (2) If the tenant denies the assertions in the petition or does not return the response form a hearing shall be conducted and a decision issued on the issues of whether the tenant is a “tenant not in occupancy” and the new maximum allowable rent of the unit. The procedures set forth in Board regulations 4007 through 4029 and 4039 shall be used in hearings under this regulation.
- (e) The landlord has the burden of establishing a prima facie case in the petition and supporting documents that the unit is not the tenant’s residence. If the landlord establishes this prima facie case, the burden of proof shifts to the tenant to prove that the unit is her or his usual residence of return.
- (f) If the Board staff member determines that the petition and supporting documents do not establish a prima facie case and that the petitioner cannot reasonably be expected to produce additional evidence sufficient to establish the allegations in the petition, then the petition shall be referred to the Board Administrator or Hearings Supervisor for dismissal and notification of the landlord and tenant. The dismissal may be appealed to the Board within ten days of the date of dismissal. The petition may be refiled at a later date should the petitioner obtain additional evidence.

- (g) Occupancy as a tenant's residence does not require that the tenant be physically present in the unit at all times or continuously but that it is the tenant's usual residence of return. Evidence that the unit is not the tenant's residence includes, but is not limited to, the following factors. These factors shall be weighed in light of the totality of the circumstances.
- (1) the tenant does not carry on basic living activities at the unit for extended periods of time;
 - (2) another property or unit is listed as the tenant's place of residence on any motor vehicle registration, driver's license, voter registration, or with any other public agency, including federal, state, and local taxing authorities;
 - (3) utilities for the unit are billed and mailed to a different residential property;
 - (4) the tenant's personal possessions are not located in the unit;
 - (5) a homeowner's tax exemption or renter's credit for the tenant has been filed for a different property or the tenant is owner of record of a different residential property;
 - (6) the tenant is a corporation or is otherwise not a natural person. This factor shall not apply if the tenant is a trust and the trust's beneficiary is the unit's occupant or if a natural person is the subtenant residing at the unit.
 - (7) the tenant is absent from the unit for extended periods of time, other than for military service, hospitalization, vacation, family or friend emergency or care, Peace Corps service, academic sabbatical, or other reasonable temporary or seasonal periods of absence, such as travel necessitated by employment or education.
 - (8) the unit is used primarily for storage, entertaining, or as an office;
 - (9) the tenant rents more than one unit at the property and the number of occupants is less than the number of bedrooms in the combined units.
- (h) A tenant who is enrolled as a student with a minimum class load of 60% or who is a member of the faculty or staff at an educational institution in the Los Angeles area qualifies as a tenant in occupancy notwithstanding his/her having another residence to which he/she will ultimately return.
- (i) Rent increases pursuant to this regulation shall be determined as follows:
- (1) If a comparable unit or units on the property received a vacancy increase pursuant to Civil Code section 1954.53 within three (3) years of the date the petition was filed, the new maximum allowable rent for the unit rented by the tenant not in occupancy shall be the average maximum allowable rent of those comparable units in effect at the date of the decision.

- (2) If subparagraph (i)(1) above does not apply, the new maximum allowable rent for the unit rented by the tenant not in occupancy shall be the median rent for comparable units in the area defined in regulation 4104(D)(1) in which the property is located. Only rents for units which have had at least one vacancy increase within three (3) years of the date the petition was filed shall be included in the median rent calculation. This median rent amount shall be taken from the most recent Board Report entitled Impact of Market Rent Vacancy Increases.
 - (3) For purposes of this regulation, a comparable unit is defined as a unit with the same number of bedrooms as the subject unit.
 - (4) The hearing examiner, Hearings Supervisor, Board Administrator, or the Board may adjust the rent determined pursuant to subparagraphs (i)(1) and (2) upwards or downwards upon a showing that the subject unit's amenities or physical condition are substantially different from those of the comparable units. Factors for consideration include but are not limited to those set forth in regulation 4104(D)(4).
- (j) If a timely appeal is filed, the decision of the hearing examiner shall be stayed pending determination by the Board on appeal. The Board's decision to affirm, reverse, or modify the hearing examiner's decision shall become final at the time of the Board action.
 - (k) If no appeal is filed pursuant to regulation 4021, the decision of the hearing examiner shall be the final decision of the Board.
 - (l) If the final Board decision grants the landlord's petition, the landlord shall give written notice of the increase in the maximum allowable rent authorized therein as provided in California Civil Code section 827. Notice of a rent increase under this regulation shall not be given until the decision is final.

[3304(a),(b)(3),(d)(1)(2),(i),(j) amended 01/08/04]

[3304(b)(2),(i)(1)(2)(3),(k)(l) adopted 01/08/04]