



Rent Stabilization Board
Legal Department

MEMORANDUM

DATE: September 23, 2021

TO: Honorable Members of the Rent Stabilization Board

FROM: Honorable Members of the IRA/AGA/Registration Committee

By: Matthew Siegel, Staff Attorney *MS*

SUBJECT: Proposed Amendment to Regulation 503 – Definition of Principal Residence [First Reading]

Recommendation:

That the Board adopt an amendment to Regulation 503, eliminating the “sunset” provision in 503(B)(2) as stated in 503(E) and to enact an amendment to Regulation 503 re-inserting 503(B)(2).

The provision in 503(B)(2) allows for the grantor of a revocable living trust to maintain an exemption as a natural person who is owner-occupying a unit when they have named another person as the trustee of the trust but has maintained oversight over the amount of rent charged at the property as well as any decision to evict any tenant from the property. The IRA/AGA/Registration Committee unanimously recommended this change at their July 28, 2021 meeting.

Background and Need for Rent Stabilization Board Action:

On September 19, 2019 the Board amended Regulation 503 to allow for a natural person who has granted their property into a revocable living trust to maintain an owner-occupancy exemption of their unit under three distinct criteria. For all three criteria the unit must be owner-occupied by the grantor.

The first criteria for allowing the exemption is when the person claiming residence at the unit is both the grantor and the trustee of the trust. The second criteria is when the grantor has named another person as the trustee of the trust but have maintained oversight over the amount of rent charged at the property as well as any decision to evict any tenant from the property. The final criteria is when the natural person is the sole surviving beneficiary of a revocable living trust for which all grantors/trustees are deceased and the sole surviving beneficiary is residing at the property.

The second criteria that pertains to another person being named the trustee has a sunset provision of September 19, 2020. This provision was extended by the Board via Resolution 20-17 to March 31, 2021. Thus, as of April 1, 2021, section 503(B)(2) was repealed.

The concern of the committee and the Board in adopting this section revolved around the level of control and decision-making that the grantor preserved as it related to any tenant also residing at the property. To alleviate that concern, the sunset provision was enacted and staff was directed to review rent levels and eviction activity going back two years for properties that claimed exemption under 503(B)(2).

Proposed Revisions to Regulation 503

1. Response to Enactment of Regulation

In response to the amendments made to the regulation, staff subsequently identified 128 potential "golden duplexes" that appeared to possibly be owned in trust.¹ Staff also created a Living Trust Declaration for Owner-Occupancy Exemption Form to be filled out by owners whose properties qualified for the exemption under any of the three criteria.

In response, two properties claimed exemption under 503(B)(2). For one of the duplexes, the grantor has named family members as the trustees. The grantor still resides at the property and after being contacted by staff stated that there have been no evictions for at least ten years nor have there been any rent increases the past two years. The grantor further stated that he was actually contemplating lowering the rent for his tenants.

The second claim entailed the grantor creating the trust as a means to protect her identity due to fear of violence from a third person. The claim was supported by a letter from the grantor's attorney and reiterated that the grantor did reside on the property and maintained all the rent-control decisions as it related to the tenant in the second unit. The attorney for the property owner stated that no eviction has taken place in the past two years and the rent on the tenant has been raised \$10.00.

2. Rationale for Amendment

The number of claims under 503(B)(2) is minimal. Of the two claims, neither have had evictions nor any substantial rent increases. The Board's concern in permitting the exemption under 503(B)(2) appear to be allayed.

The two claims under 503(B)(2) illustrate the value of this form of trust structure as there can be various motives for creating a trust where the grantor is different from the trustee. The Board's concern that an absentee trustee would operate the property from a more business-like perspective as opposed to an on-site owner-occupant for which the policy basis of the grant of exemption stems from permitting the landlord greater leeway when they are living in such close proximity to one other household is not supported by the cases we have reviewed. Given the minimal number of claims under this section and the legitimacy for trusts being created in this format, staff recommends amending Regulation 503 to re-enact Section 503(B)(2).

Proposed Regulation 503 is attached hereto. Additions are underlined.

Name and Telephone Number of Contact Person:

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Rent Stabilization Board

¹ A "golden duplex" is a two-unit property where one unit was owner-occupied by at least a 50% owner of record as of December 31, 1979 and where one unit is currently owner-occupied by at least a 50% owner of record (B.M.C. 13.76.050F)

503. Definition of Principal Residence

(A) **Background and Purpose.** Like many of the exemptions listed in Berkeley Municipal Code Section 13.76.050, the exemptions identified in Berkeley Municipal Code Sections 13.76.050F. and 13.76.050G. (Sections 5(f) and 5(g) of the Ordinance) are transitory. A landlord may not claim an exemption pursuant to Sections 5(f) or 5(g) of the Ordinance unless the landlord occupies a unit on the property as his/her principal residence at the time the landlord asserts or claims the exemption.

(B) "Person" limited to "natural person." Only a natural person may claim principal residence in a unit when claiming an exemption under Sections 5(f) or 5(g) of the Ordinance. For purposes of this Regulation, "person" shall mean only a "natural person." A successor in interest is not entitled to the exemptions in either Sections 5(f) or 5(g) of the Ordinance merely because a previous landlord claimed entitlement to one of these exemptions. A bank, corporation, or other business entity may never claim a unit as exempt under Sections 5(f) or 5(g) of the Ordinance as such entities are not natural persons. A natural person who has granted the subject property into a revocable living trust may claim principal residence only as follows:

(1) The person claiming principal residence is both the grantor and the trustee of the revocable living trust, or

(2) The grantor has named another natural person as trustee but has retained oversight over the amount of rent charged at the property and any decision to evict any tenant from the property.

(3) A natural person who is the sole surviving beneficiary of a revocable living trust for which all grantor(s)/trustee(s) are deceased may claim principal residence.

(4) All applicable criteria set forth in Subsections C and D shall apply equally to natural persons claiming principal residence pursuant to a revocable living trust as if they were owners of record. The Board may require appropriate documentation, including but not limited to an affidavit signed under penalty of perjury and/or a Certification of Trust for the purpose of establishing exemption.

(C) Principal residence, as used in Sections 5(f) and 5(g) of the Ordinance, is that dwelling place where the person actually resides a majority of the time. For the purpose of this Ordinance, a person may have only one principal residence.

(D) In the determination as to the principal residence status of the dwelling place, the following factors shall be considered:

(1) whether the person carries on basic living activities at the dwelling place;

- (2) whether the person maintains another dwelling and, if so, the amount of time that the person spends at each dwelling place;
- (3) whether the person has filed for and obtained a homeowner's exemption for the dwelling place;
- (4) whether the person is a registered voter at the dwelling place;
- (5) other relevant factors.

~~(E) Sunset Provision. Subsection (B)(2) of this regulation shall remain in effect only until September 19, 2020, and as of that date is repealed, unless a later enacted regulation, which is enacted before September 19, 2020, deletes or extends that date.~~

[Effective Date: 11/26/80; renumbered 04/09/99; added new Sections A and B, and enumerated sub-section identifiers of new Section D (previously A through D) 06/17/13; amended Section B to make clear that properties held in certain types of revocable living trusts will qualify for exemption when applicable criteria is met; sunset provision identified in Section E – 9/1919; Subsection E removed-9/23/2021]