



Rent Stabilization Board
Legal Department

DATE: May 18, 2023

TO: Honorable Members of the Berkeley Rent Stabilization Board

FROM: Honorable Members of the LIRA Committee
By: Matt Brown, General Counsel *MB*
Hannah Kim, Staff Attorney

SUBJECT: Proposed Amendments to Regulations 525 [Procedure for Challenging Tenant in Occupancy Status], 1205 [Filing the Petition], and 1210 [Notices to Opposing Parties and Board] – First Reading

Recommendation

That the full Board adopt the following proposal to amend Regulations 525,¹ 1205,² and 1210³ to allow for service of various petition documents via email. The LIRA Committee reviewed staff's proposed amendments at their February 6, 2023 committee meeting, and recommended adoption of the attached amendments.

Background

The City Manager, acting as the Director of Emergency Services, declared a local State of Emergency based on COVID-19, which the City Council ratified on March 10, 2020. Staff began remote work and many tenants and landlords more frequently used email for communications with staff and other parties, including submitting petitions and notices pursuant to Regulations 525, 1205, and 1210.

After over three years of such practices, the Rent Board staff concludes that permitting email service pursuant to certain guidelines (e.g. verifying validity of an email address) reflects

¹ Regulation 525 outlines the procedure for challenging tenant(s) occupancy status.

² Regulation 1205 outlines the procedure for filing rent increase petitions relating to regulations: 1214, (Advisory Implementation), 1262-1265 (Maintenance of Net Operating Income), 1267 (Capital Improvement), 1268 (Recent Rent Changes), 1269 (Change in Space or Services/Code Violations), 1270 (Increase in Occupancy), 1276 (Debt Service), 1278 and 1278.5 (Restoration of Annual General Adjustment), and 1280 (Historically Low Rent), 702 (Payment of Interest on Security Deposit), 1269 (Change in Space or Services/Code Violations), 1270 (Occupancy Level), 1271 (Overcharges) and Rent Withholding Petitions pursuant to Chapter 15.

³ Regulation 1210 outlines the procedure for noticing opposing parties as well as the Board.

the Rent Board’s current best practices⁴ and should continue irrespective of a State of Emergency based on COVID-19.

A number of other California rent control jurisdictions have similarly changed their regulations and procedures to allow for increased digital communication during the administrative petition process in lieu of requiring only hard copies through personal delivery or U.S. mail.

The LIRA committee reviewed and approved these proposed amendments at its meeting on February 6, 2023.

Proposed Amendments

Regulation	Issue	Proposed Fix
525	Reg. 525 does not allow for email service of petitions relating to challenging tenant occupancy status.	Explicitly allow for email service in accordance with Regulations 1205 and 1210.
1205	Reg. 1205 does not allow for email service of rent increase petitions.	Explicitly allow for email service if the serving party confirms the validity of the email address.
1210	Reg. 1210 does not allow for email service of notices to opposing parties and the Rent Board staff.	Explicitly allow for email service unless a party provides notice on a Board-approved form that it declines to receive service in such manner.

Regulation 525

Staff recommends amending **Regulation 525(A)** as follows:

“(A) The landlord of any rental unit who seeks a determination that the unit is not being occupied by a tenant in occupancy may file a petition on a form provided by the Board. The petition shall include a brief explanation of the basis for the petition, including a statement that the unit is not occupied by any subtenants. (See Regulation 1013 (O) and California Civil Code Section 1954.53 (d) et. seq. for the status of units occupied by subtenants, where the original occupant(s) no longer permanently reside(s) in the unit.) Proof that the petition has been served on all tenants claiming a right to possession of the unit shall be submitted with the petition. Service shall be *in accordance with Regulations 1205 and 1210* ~~by personal service or service by~~

⁴ Email service allows Rent Board staff to review, respond to, and manage petitions and notices in a much more efficient manner than US Mail alone.

~~mail to the unit and any other address provided to the owner by the tenant in writing.~~ Concurrent with or anytime after the filing of the petition, the landlord may give legal notice of a rent increase that exceeds the limitations of Berkeley Municipal Code Sections 13.76.110 and 13.76.120, however, the noticed increase shall remain inoperative until a decision is rendered on the landlord's petition."

Regulation 1205

Staff recommends amending **Regulation 1205(A)(3)** to include the following italicized language:

"The landlord shall file with the Board the petition, copies of the documentation required by Regulation 1201 and by the Regulation pursuant to which the Petition is filed, and a proof of service by first-class mail, *by email if the landlord confirms on a Board-approved form that the respondent's email address is valid*, or in person of the petition and documentation on each affected tenant. The landlord may also file an Agreement of Parties and/or Waiver of Right to Hearing."

In addition, staff recommends amending **Regulation 1205(B)(3)** to include the following italicized language:

"The tenant shall file with the Board the petition, copies of the documentation required by Regulation 1201 and by the Regulation pursuant to which the petition is filed, and proof of service by first-class mail, *by email if the tenant confirms on a Board-approved form that the respondent's email address is valid*, or in person of the petition and documentation."

Should the Board adopt these proposed amendments, staff will prepare the Board-approved form, which will be included in the petition packet.

Regulation 1210

Staff recommends amending **Regulation 1210(A)** to include the following underlined and italicized language:

"Manner of Notice. Notice(s) to opposing parties shall be served by first-class or certified mail, *email*, or by personal service on the party or the party's representative of record. Personal service shall be performed according to state law. Notices to the Board shall include a proof of service that proper notice was given to the opposing parties, by means of a written declaration by the server under penalty of perjury, stating the names and addresses of parties served and the date and manner of such service, *unless service was by email, in which case the parties served may be identified as the recipients in the email header.*"

In addition, staff recommends amending Regulation 1210 to add **Section 1210(D)**, which will state:

“(D) Email. Where the Board or a party is required to serve a document under this Chapter, service may be affected by email delivery unless a party provides notice on a Board-approved form that it declines to receive service by email. A party may not decline to be served by email if the party uses email for serving documents.”

Should the Board adopt these proposed amendments, staff will prepare the Board-approved form, which will be included in the petition packet.

Conclusion

Staff would like to continue use of email service for petitions and certain notices and recommends the above amendments to memorialize current best practices. Staff has also heard from the public that they appreciate the convenience of allowing for more access to the Board’s services through email.

The LIRA Committee reviewed staff’s proposed amendments at their February 6, 2023 committee meeting, and recommended further changes. Legal staff discussed these changes with Hearings Unit staff who have agreed to implement the changes as proposed by the LIRA Committee in the attached amendments.

Proposed Regulations 525, 1205, and 1210 are attached hereto. Additions are underlined. Deletions are marked with strikethrough text.

Name and Telephone Number of Contact Person:

Matt Brown, General Counsel (510) 981-4930
Rent Stabilization Board

Attachments:

1. Proposed Amendments to Regulation 525
2. Proposed Amendments to Regulation 1205
3. Proposed Amendments to Regulation 1210

525. Procedure for Challenging Tenant in Occupancy Status.

(A) The landlord of any rental unit who seeks a determination that the unit is not being occupied by a tenant in occupancy may file a petition on a form provided by the Board. The petition shall include a brief explanation of the basis for the petition, including a statement that the unit is not occupied by any subtenants. (See Regulation 1013 (O) and California Civil Code Section 1954.53 (d) et. seq. for the status of units occupied by subtenants, where the original occupant(s) no longer permanently reside(s) in the unit.) Proof that the petition has been served on all tenants claiming a right to possession of the unit shall be submitted with the petition. Service shall be ~~by personal service or service by mail to the unit~~ in accordance with Regulations 1205 and ~~any other address provided to the owner by the tenant in writing~~ 1210. Concurrent with or anytime after the filing of the petition, the landlord may give legal notice of a rent increase that exceeds the limitations of Berkeley Municipal Code Sections 13.76.110 and 13.76.120, however, the noticed increase shall remain inoperative until a decision is rendered on the landlord's petition.

(B) Petitions filed under this section shall be expedited so that a hearing on the petition is held within 30 days of filing and a decision rendered within 30 days of the hearing. The parties shall be given at least 15 days notice of the hearing.

(C) Except as provided in subsection (B), proceedings on petitions filed under this section shall be conducted according to all provisions of Chapter 12, Subchapter B. A determination that a tenant is not a tenant in occupancy must be supported by a preponderance of the evidence presented to the hearing examiner. If the owner makes a prima facie showing that the unit is not continuously occupied by the individual as a residence, the burden of proving that the unit is the usual place of return and not a secondary residence or used primarily for commercial, office, or storage, except as provided in Section 524(D), shall shift to the tenant. If the hearing examiner determines that the tenant is not a tenant in occupancy, any rent increase noticed by the landlord shall become effective on the date specified in the notice or the date on which rent is next due following service of the hearing examiner's decision, whichever is later.

[Effective Date: 5/22/03]

1205. Filing the Petition

(A) For rent increase petitions, the following procedure applies:

(1) Rent increase petitions may be filed under the following regulations: 1214, (Advisory Implementation), 1262-1265 (Maintenance of Net Operating Income), 1267 (Capital Improvement), 1268 (Recent Rent Changes), 1269 (Change in Space or Services/Code Violations), 1270 (Increase in Occupancy), 1276 (Debt Service), 1278 and 1278.5 (Restoration of Annual General Adjustment), and 1280 (Historically Low Rent).

(2) A copy of the rent increase petition and, except as provided in Regulation 1267 (Capital Improvements), supporting documentation must be served on the tenants of all units affected by the petition.

(3) The landlord shall file with the Board the petition, copies of the documentation required by Regulation 1201 and by the Regulation pursuant to which the Petition is filed, and a proof of service by first-class mail, by email if the landlord confirms on a Board-approved form that the respondent's email address is valid, or in person of the petition and documentation on each affected tenant. The landlord may also file an Agreement of Parties and/or Waiver of Right to Hearing.

(4) Board staff shall review the petition and supporting documentation for conformance to Board regulations and within five working days shall either mail notice of the petition's unacceptability (pursuant to Regulation 1207) to the landlord, or mail Notice to Opposing Parties to the tenants, as provided in Regulation 1210. For petitions filed pursuant to Regulations 1262-1265 (MNOI), the review period shall be 15 working days. If a petition is unacceptable, the landlord may refile at any time but the Board will administratively close the file after fourteen days. Acceptance of a petition by Board staff does not mean that the petitioner has submitted adequate documentation to support a decision in petitioner's favor. A landlord may, at any time prior to submission of the matter for an administrative decision, request that a hearing be held.

(5) The notice to the tenant shall include a notice that the tenant has a right to object to the petition, and that if the tenant does not object within twenty days of the mailing of the notice, or if the tenant's objection does not specify one or more grounds listed in the notice, the rent for the tenant's unit may be increased by the applicable amount, based on the information in the landlord's petition and the Board's files. Failure to file an objection may constitute a waiver of the right to a hearing on objections to the petition.

(6) A hearing shall be held on the petition and objections thereto, in accordance with Regulation 1221, unless no tenant files an objection within the time allowed, the landlord has not requested a hearing and the hearing examiner determines that a decision may be rendered on the petition without hearing live testimony. Notwithstanding any other provision of these regulations, Board staff may, upon notice to all parties, request further documentation and/or schedule a hearing on the petition

(B) For tenant petitions, the following procedure applies:

(1) Tenant petitions may be filed pursuant to Regulations 702 (Payment of Interest on Security Deposit), 1269 (Change in Space or Services/Code Violations), 1270 (Occupancy Level), 1271 (Overcharges) and Rent Withholding Petitions pursuant to Chapter 15.

(2) A copy of the tenant petition and supporting documentation must be served on the petitioner's landlord.

(3) The tenant shall file with the Board the petition, copies of the documentation required by Regulation 1201 and by the Regulation pursuant to which the petition is filed, and proof of service by first-class mail, by email if the tenant confirms on a Board-approved form that the respondent's email address is valid, or in person of the petition and documentation.

(4) Board staff shall review the petition and supporting documentation for conformance to Board regulations and within five working days shall either mail notice of the petition's unacceptability (pursuant to Regulation 1207) to the tenant, or mail notice to the landlord, as provided in Regulation 1210. If a petition is unacceptable, the tenant may refile at any time but the Board will administratively close the file after fourteen days. Acceptance of a petition by Board staff does not mean that the petitioner has submitted adequate documentation to support a decision in petitioner's favor.

(5) The notice to the landlord shall include a notice that the landlord has a right to object to the petition, and that if the landlord does not object within twenty days of the mailing of the notice, or the landlord's objection does not specify one or more grounds listed in the notice, the rent for the tenant's unit may be decreased by the applicable amount, based on the information in the tenant's petition and the Board's files. Failure to file an objection may constitute a waiver of the right to a hearing on objections to the petition

(6) A hearing shall be held on the petition and objections thereto, in accordance with Regulation 1221, unless the landlord does not file objection within the time allowed, the tenant does not request a hearing and the hearing examiner determines that a decision may be rendered on the petition without hearing live testimony. Notwithstanding any other provision of these regulations, Board staff may, upon notice to all parties, request further documentation and/or schedule a hearing on the petition.

(C) The time limits set forth in this section will prevail over any other time limits set out elsewhere in these regulations.

[Amendments effective April 11, 1997, January 8, 2000; amended Sections (A)(3) and (B)(3) to make clear that petitioners need only file the petition and need not file two copies of the documentation required by Regulation 1201 – 9/19/19]

1210. Notices to Opposing Parties and Board

(A) Manner of Notice. Notice(s) to opposing parties shall be served by first-class or certified mail, email, or by personal service on the party or the party's representative of record. Personal service shall be performed according to state law. Notices to the Board shall include a proof of service that proper notice was given to the opposing parties, by means of a written declaration by the server under penalty of perjury, stating the names and addresses of parties served and the date and manner of such service, unless service was by email, in which case the parties served may be identified as the recipients in the email header.

(B) Notice after Petition Filed. The Board shall notify the opposing party(ies) of the filing of a petition and send each opposing party a response form that includes notice that the party has a right to object to the petition, a statement of possible objections, notice that the ~~party~~party's failure to object within the time specified may constitute a waiver of the right to have a hearing on objections to the petition, and a brief description of the hearing process.

(C) Other Notices. The Board shall send a copy of all notices, and parties shall send a copy of all documents or communications filed with the Board after the filing of the initial petition, except for documents or communications which are filed during the hearing or are confidential, to each party.

(D) Email. Where the Board or a party is required to serve a document under this Chapter, service may be affected by email delivery unless a party provides notice on a Board-approved form that it declines to receive service by email. A party may not decline to be served by email if the party uses email for serving documents.

[Amendment to section (B) effective January 8, 2000]