

Public
**CITY OF BERKELEY
RENT STABILIZATION BOARD
LEGAL DEPARTMENT
2125 MILVIA STREET
BERKELEY, CALIFORNIA 94704
TEL: (510) 981-4930 TDD: (510) 981-6903 FAX: (510) 981-4940**

INSTRUCTIONS FOR FILING APPEAL

You may appeal the Decision of the Hearing Examiner within 30 days of its receipt. A decision is presumed received within 5 days of the date it is mailed. Therefore, an appeal that is filed more than 35 days after the date the Hearing Examiner's decision was mailed will be dismissed unless you prove that the decision was not received within five days of mailing. *An appeal is filed when it is received in the Rent Board offices. Appeals mailed to the Rent Board are filed on the date the mailed documents are received by the Board, not the date the appeal is postmarked.*

An appeal is limited to a review by the Board of the evidence that was presented at the original hearing on the case. New evidence will not be permitted or considered by the Board. Rules governing appeals are contained in Section 1242 of the Rent Stabilization Board Regulations, a copy of which is attached.

To appeal the decision, you must:

1. Complete the attached appeal form. You must state the specific grounds on which the appeal is based. The Board will not consider an appeal that fails to state specific grounds and supporting arguments.
2. Serve the opposing parties with a copy of the completed appeal form. Service may be made by first-class or certified mail or personal delivery to the opposing parties.
3. Complete the attached Proof of Service form indicating that all opposing parties were served copies of the completed appeal, including any attachments.
4. File the completed Appeal and Proof of Service, and pay a filing fee, with the Board. (An Appeal is *filed* the date it is received in the Board's offices, not the date it is mailed.) The filing fee is \$100 per unit, up to a maximum of \$500.

If your appeal claims that you had good cause for failing to respond to a petition or appear at a hearing or that you wish to present evidence that could not have been produced at a hearing, the Board's Executive Director may treat the appeal as a request for reconsideration and refer the matter back to the hearing examiner.

At least 14 days before the appeal hearing, you will be mailed a notice of the date of the hearing and a copy of legal staff's recommendation on how the Board should resolve your appeal. You will be allowed to submit a written response to the staff recommendation up to six days before the appeal hearing.

At the hearing, you will have the opportunity to present written or oral arguments before the Board. After hearing your appeal, the Board may affirm, reverse, remand, or modify the Decision of the Hearing Examiner. Once the Decision is made, the Board will send a Notice of Decision to all of the parties. If you are not satisfied with the Board's Decision, you may file an action in Court within ninety (90) days of the decision date.

1242. Appeal

- (A) Any party may appeal to the Board. On appeal, the Board may affirm, reverse, remand or modify the decision of the hearing examiner. The Board may conduct a new hearing or may act solely on the basis of the official record before the hearing examiner. The decision on appeal shall be the final decision of the Board, and the Board shall send a notice of the decision to all parties to the appeal, which shall include a statement of their right to judicial review. Decisions remanded to the hearing examiner shall be limited to instances where additional findings of fact are required.
- (B) Any appeal shall be filed on a form provided by the Board no later than 30 days after receipt of the notice of the hearing examiner's decision. A party is presumed to receive the decision five (5) days after it is mailed. Appeals that are not timely filed shall be dismissed by legal staff without further Board review. A party may file an appeal to the executive director regarding legal staff's dismissal but must include good cause as to why the appeal was not timely filed. Such good cause may include, but is not limited to, the failure of a party to receive the notice of decision, the illness of a party, or other emergency which makes it impossible for a party to have timely filed. The executive director shall grant or deny the request to consider the late-filed appeal. Should the request be granted, the Board will consider the appeal according to the terms outlined by this regulation.
- (C) The appeal must contain a statement of the specific grounds on which the appeal is based. The Board will not consider an appeal that fails to state any facts or arguments in support of the grounds alleged in the appeal. Except as provided in subdivision (F), no other documents in support of the appeal will be accepted after the appeal deadline unless specifically requested by the Board. The appeal shall be sent to the Board and opposing parties and their representative. The Board or staff may order that appeals relating to the same building or property, or different properties of the same landlord, be consolidated. The opposing party shall file any response to the appeal within 15 days from the date the appeal is filed.
- (D) At the time of filing the appeal, appellant(s) shall pay an appeal fee in the amount of \$100 for each unit for which an appeal is brought, up to a maximum of \$500. The appeal fee may be waived in accordance with Regulation 1204.
- (E) In accordance with the Constitution of the State of California, the hearing examiner's decision shall be stayed pending appeal. In its decision, the Board shall order the appropriate party to make retroactive payments over a reasonably appropriate period to restore the parties to the positions they would have occupied had the examiner's decision been the same as that of the Board or had not been stayed.
- (F) The Board will consider appeals of hearing examiners' decisions. At least 14 days prior to the date set for Board action on the appeal, a staff report shall be prepared recommending that the decision of the hearing examiner be affirmed, modified, reversed or remanded to the examiner for further hearing. Staff may supplement the record by including matters of which the Board may take official notice, provided that the parties are notified of such matters at least 14 days prior to the date set for Board action. Any objection to a staff request for official notice shall be filed no later than six days prior to the date set for Board action.
- (G) At least 14 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. Copies of the staff recommendation shall be mailed to all parties and their representatives at least 14 days prior to the Board action. Copies of the official record and the staff recommendation shall be available for public review at the Public Information Unit of the Board at least 14 days prior to the date set for Board action. Parties may submit written comments to the Board up to 6 days prior to the Board action.

(H) At the Board meeting at which action on the appeals is scheduled, each party or their representative will be allowed seven minutes to address the Board at the beginning of the hearing in the following order: appellant for five minutes, respondent for seven minutes, appellant for two minutes.

(I) Unless the Board determines that a de novo hearing is required, the Board's decision will be based exclusively on the record before the hearing examiner. Parties shall be instructed not to discuss or comment upon factual matters or evidence that were not presented to the hearing examiner or officially noticed. Parties may discuss or comment upon the legal matters in question and any other pertinent issues raised by the appeal. The Board shall disregard any discussion or comment regarding factual matters that were not in the record before the hearing examiner or officially noticed. The vote of five Commissioners is required to affirm, modify, remand or reverse the decision of the hearing examiner. If the Board has not acted on the appeal at two consecutive Board meetings, the appeal is deemed denied.

(J) The Board's decision to affirm, modify, remand or reverse the decision of the hearing examiner shall be supported by written findings of fact and conclusions of law. When the Board votes to adopt the staff recommendation unchanged, the parties to the appeal will be notified only of the Board's decision. When the Board does not adopt the staff recommendation as written, a written decision of the Board shall be mailed to the parties or their representative of record.

(K) Continuances. Continuances of dates set for Board action on appeals shall be granted by a majority of the Board or by the Director only for good cause shown. A written request and the reasons for it must be received by the Rent Stabilization Board at least 2 business days prior to the scheduled hearing, unless good cause is shown for later request. The written request must contain the reasons for the continuance, an explanation of what efforts were made to ascertain the position of the other parties regarding the request for a continuance, and mutually acceptable alternative dates. Copies of this written request must be sent immediately to all other parties and proof of service must accompany the written request filed with the Board.

(L) Reconsideration.

(1) At the discretion of the executive director or his or her designee, an appeal may be treated as a request for reconsideration and referred back to the hearing examiner for such reconsideration only if it is claimed by the appellant that:

- (a) there was good cause for a failure to respond to a petition;
- (b) there was good cause for a failure to appear at a settlement conference or hearing;
- (c) he or she wishes to present relevant evidence that could not, with reasonable diligence, have been discovered and produced at the hearing; or
- (d) the decision resulted from a clearly inaccurate application of the law; hearings staff discovered a problem with the record; the underlying legal standard upon which the decision is based changed before final disposition of the case, including matters subject to a pending petition for writ of administrative mandamus; or any other reason the case should be remanded for reconsideration for administrative efficiency.

(2) In the event that reconsideration under subsection (L)(1) is ordered, the parties will be so notified within 60 days of the filing of the appeal and, thereafter, all correspondence shall be directed to the hearing examiner. The threshold issue on reconsideration shall be whether a preponderance of the evidence supports the assertion that good cause existed for the failure to respond to a petition or to appear at a

settlement conference or hearing or that the newly offered evidence could not, with reasonable diligence, have been discovered and produced at the hearing. Only if good cause for the failure is found, may the hearing examiner reconsider the merits of the petition.

(3) If the matter is reconsidered by the hearing examiner and the appellant does not then wish to appeal the new decision, the appellant may, within 30 days of receipt of the decision after reconsideration, request refund of the appeal filing fee and, upon such timely request, the filing fee shall be refunded. If the appellant wishes to contest the decision following reconsideration, he or she may file a supplemental appeal, so stating within 30 days after receipt of the decision after reconsideration. No filing fee shall be required for such supplemental appeal. Any other party may also appeal the decision after reconsideration within 30 days after its receipt.

[Amended Regulation 1242 effective April 9, 1993; Amended subdivisions B, D, E, G & H August 5, 2002; Amended Section (B) to redefine procedures for appeals that are not timely filed, Updated Appeal Fee, added subdivision (d) to new Section (L) to include several other reasons cases may be remanded, and increased the time legal staff has to notify parties of remand for reconsideration (amended on January 22, 2018).]

Public

Appeal Fee: _____

Receipt # _____

CITY OF BERKELEY
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LEGAL DEPARTMENT

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BERKELEY, CALIFORNIA 94704

TEL: (510) 981-4930 TDD: (510) 981-6903 FAX: (510) 981-4940

_____)	
(Name of person(s) on original petition))	Petition No. _____
Petitioner(s),)	APPEAL
v.)	
_____)	
(Name of person(s) on original petition))	
Respondent(s).)	
_____)	

PERSON REQUESTING APPEAL: _____

ADDRESS: _____ PHONE _____

EMAIL _____@_____ FAX _____

REPRESENTATIVE (if any): _____

ADDRESS: _____ PHONE _____

EMAIL _____@_____ FAX _____

PROPERTY ADDRESS FOR WHICH APPEAL FILED: _____

MAILING DATE OF HEARING EXAMINER'S DECISION: _____

FILING FEE: A filing fee of \$100 per unit, to a maximum of \$500, must be paid when this appeal is filed. (The appeal fee may be waived as provided in Regulation 1204.)

REASON FOR APPEAL: Please attach a statement explaining fully your grounds for Appeal. The Board will not consider any grounds or arguments in support of the appeal that have not been stated.

PLEASE NOTE: Any party opposing this appeal has 15 days, from the date of receipt, to submit a written response to the Rent Board and must attach a proof of service showing all parties have been served.

PROOF OF SERVICE

I am a resident of _____ County and was, at the time of service, over eighteen years of age. On _____ (date), I served one copy of the following document(s):

By: (Check Appropriate Box)

- Delivering the documents in person to the following individual(s):
[print name of each party served]

- Placing the documents, enclosed in a sealed envelope with first-class postage fully paid, into a U.S. Postal Service mailbox, addressed as follows:
[print name and address as shown on envelope of each party served:]

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

(Signature)

(Date)

(Printed Name)