

SANTA MONICA RENT CONTROL BOARD

STAFF REPORT ON PROPOSED AMENDMENTS TO CHAPTER 15 (SUBPOENAS)

TO: Commissioners

FROM: Staff

RE: [Proposed Amendments to Chapter 15](#)
(Subpoenas)

FOR BOARD MEETING OF: June 26, 2003

Introduction

Chapter 15 of Board regulations establishes procedures for the issuance of subpoenas which are used in administrative hearings to compel attendance of material witnesses and production of relevant documents or other tangible evidence. The existing procedures provided adequate standards for the administration of the subpoena power under past practice. However, since the recent adoption of regulation 3304, relating to “tenants not in occupancy,” records of a more private nature are being sought. In response to these demands, amendments to Chapter 15 are necessary in order to protect individual privacy rights.

The proposed amendments are designed to protect parties’ constitutionally protected right to privacy as discussed in *Valley Bank of Nevada v. Superior Court* (1975) 15 Cal.3d 652 and *Sehlmeyer v. Department of General Services* (1993) 17 Cal.App.4th 1072, while at the same time balancing the privacy rights with the subpoenaing party’s right to obtain information necessary for his or her case. The bulk of the procedure is taken from Code of Civil Procedure section 1985.3, which sets forth a similar notification procedure for court subpoenas. However, the procedure in 1985.3 has been altered somewhat due to the significantly shorter deadlines and quicker procedures in Rent Control proceedings.

Proposed new language is in bolded italics, and proposed deleted portions of existing Chapter 15 are lined out. The following describes the essence of the amendments.

Section 15032(c) clarifies that a subpoena must be personally served on a witness, and specifies how much time should be given before records are to be

produced. New section 15032.5 defines “personal records,” which are those records protected by an individual’s constitutional right to privacy. In addition, and most importantly, this new section provides a detailed procedure for obtaining these records. Typically, personal records are held by a third party record holder, such as a doctor or employer, as defined in the amendment. The subpoenaing party must notify the party whose records are being sought. A form for this will be provided by the Board. This notice informs the party whose records are being sought that the records may be protected by a right of privacy, and that the party may object to the disclosure. Once a party lodges their objection, the subpoenaed records will not be disclosed until the hearing officer thoroughly reviews the matter, and considers the necessity to discover relevant facts counterbalanced against the reasonable right of privacy in one’s personal affairs.

Telephone and tax records are given an even higher degree of protection. Historically, tax records and related documents (such as W-2 forms) have been protected against compelled disclosure by what has been termed the “taxpayer’s privilege.” The source of this privilege is implied from various statutes making it a misdemeanor for taxing authorities to disclose details contained in a tax return. Telephone records have been recognized by the state legislature as deserving of a higher degree of protection, as well. Consequently, in recognition of well-established rights of privacy in these records, subpoenas for these records shall only issue with the consent of the party whose records are sought.

Amended section 15035 provides detailed procedures describing how objections to subpoenas and motions to quash are handled.¹ Pursuant to these procedures, the hearing officer will consider all relevant factors, including consideration of the purpose of the information sought, the effect the disclosure will have on the party and the hearing, the nature of the objections, and the ability to make an alternative order granting partial disclosure.

The proposed amendments are meant to facilitate the hearing process while affording parties well-established protections derived from their constitutional right of privacy.

RECOMMENDATION

Staff recommends that the Board set the attached proposed amendments to Chapter 15 for public hearing and consideration at its regular meeting on July 10, 2003. Staff further recommends that the Board adopt these proposed amendments at that time.

¹ A Motion to Quash is a legal maneuver designed to block the use of a subpoena.