

**PROPOSED AMENDMENTS TO REGULATION 3304  
For December 11, 2003 Board Meeting**

**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.** ~~the landlord may impose a one-time increase in the maximum allowable rent of the tenant's unit to market, upon proper written notice.~~ 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 ~~a petition and obtain a Board decision that the tenant is a tenant not in occupancy prior to issuing a notice of a rent increase.~~ ~~The~~ **an** original petition and two copies shall be filed 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.*** ~~according to~~ 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) ~~The landlord who increases the maximum allowable rent of a unit pursuant to this regulation shall file a registration form with the Board registering the new maximum allowable rent of the unit within 30 days of the establishment of the new maximum allowable rent. If the landlord does not file the registration form, he or she may be subject to a complaint for non-registration under Chapter 8 of Board regulations. The registration shall be on a form provided by the Board and~~

~~shall provide the following information:~~

- ~~(1) The name and business or residence street address of the owner primarily responsible for administering the apartment building rental business and the name and address of the property manager of the apartment building.~~
- ~~(2) If the owner of the property is a corporation, the registration form shall provide the street address of its principal place of business and the name of its chief executive officer. If the owner of the property is a partnership, the registration form shall provide the street address of its principal place of business and its managing partner. If the owner of the property is a limited liability company, the registration form shall provide the street address of its manager.~~
- ~~(3) The effective date and the amount of the new maximum allowable rent.~~
- ~~(4) A declaration under penalty of perjury that the information on the form is true and correct, and the signature of an owner or authorized agent of the owner.~~

***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 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 is 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) ~~This regulation is effective March 15, 2003. 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.**