

SANTA MONICA RENT CONTROL BOARD

STAFF REPORT ON PROPOSED AMENDMENTS TO REGULATION 3304  
REGARDING TENANT NOT IN OCCUPANCY

TO: Rent Control Commissioners

FROM: Staff

RE: [Proposed Amendments to Regulation 3304](#) Regarding New  
Maximum Allowable Rent for Tenant Not in Occupancy

BOARD MEETING OF: December 11, 2003

---

DISCUSSION

On November 19, 2003, the trial court in the case of *Bisno v. Santa Monica Rent Control Board*, Los Angeles Superior Court Case No. SC077533, enjoined the Board from enforcing regulation 3304 in its present form. This regulation allows landlords to increase rents of units which are not the tenants' usual residence of return. In its ruling, the court gave a detailed analysis of its reasoning in granting the injunction. The amendments proposed by staff are designed to address the court's concerns which caused it to grant the injunction.

Citing section 1804(f), the court reasoned the Rent Control Law mandates that the Board "(5) Set rents at fair and equitable levels in order to achieve the intent of this Article." It held that the law requires the Board to set rents and does not allow the Board to delegate this function to the landlord. The court added that regulation 3304 does not require landlords to set the rent at "fair and equitable levels" as required in section 1804(f)(5). See Minute Order dated November 19, 2003, attached.

In response, staff proposes that the Board amend regulation 3304 to include the determination of the new maximum allowable rent as one of the issues decided in the hearing officer and Board's decisions. The proposed amendments set forth standards for setting the new maximum allowable rents, using average maximum allowable rents of comparable units on the property which have had a vacancy increase within the prior three years. If there are no such units, the regulation utilizes median rents of units in the area in which the property is located which have had a vacancy increase within the prior three years. Finally, the rent may be adjusted if the unit's amenities or physical condition is substantially different from those of the comparable units. Staff believes this mechanism for deciding the new maximum allowable rent provides a fair rent while maintaining the purpose of the regulation.

The proposed amendments retain an expedited administrative procedure for cases in which tenants do not dispute that they do not live in the unit as their usual residence of return. However, a hearing procedure is provided if the landlord or tenant contests the new maximum allowable rent determined administratively.

Finally, the proposed amendments include a stay of the decision until it becomes final. This proposal addresses the concern expressed by the court that tenants who cannot afford the increased rent may lose their unit prior to final resolution of their case.

Specific proposed amendments are discussed as follows:

**3304(a).** Proposed amendments to this paragraph delete the provision allowing the landlord to set the new maximum allowable rent and replace it with a provision stating that the one-time increase, if appropriate, is awarded pursuant to the standards set forth in paragraph (i).

**3304(b)(2).** Subparagraph (b)(2) requires the landlord to include in the petition the proposed new maximum allowable rent for the unit and specific information on how it was calculated, to give the tenant notice of the landlord's claim.

**3304(b)(3).** Proposed additions to this subparagraph require a landlord to submit documents relating to the determination of the new maximum allowable rent of the unit, to aid in deciding this issue.

**3304(d)(1).** Proposed amendments to this provision retain the expedited procedure for units whose tenants agree that they do not reside in the unit as their usual residence. In addition, they specify that the Board Administrator or Hearings Supervisor will determine the new maximum allowable rent for the unit and provide for a hearing procedure if either party contests that determination. If no hearing is requested, the administrator or supervisor's determination is final.

**3304(i).** These proposed amendments delete the provisions requiring registration of the new maximum allowable rents for units whose tenants do not live in them as their usual residence. Registration is no longer needed, as the Board decision will determine the new rent. The deleted provisions are replaced with standards for determining the new maximum allowable rent. The standards use the average rent of comparable units at the property which have had a vacancy increase within three years of the date the petition was filed. If there are no such units, the new rent is the median rent of units in the area in which the property is located which have had a vacancy increase in the prior three years. In addition, the rent may be adjusted if the unit's amenities or condition is substantially different from that of the comparison units. These standards ensure that the new rents will be fair and also allow the decision-maker to take into account individual characteristics of the unit.

**3304(j) and (k).** The March 15, 2003 effective date of the regulation is deleted as it is no longer relevant. It is replaced with proposed language that stays a decision pending determination of any appeal to the Board. This will ensure that a tenant will not leave the unit due to increased rents before the Board hears and determines the appeal. In addition, paragraph (k) states that the hearing examiner decision is a final decision if no appeal is filed, so that it is clear when notice of the rent increase may be served.

**3304(l).** This proposed amendment requires the landlord to give notice of the rent increase in conformity with state law after the decision becomes final and clarifies that the landlord may not give notice until the decision is final.

#### RECOMMENDATION

Staff recommends that the Board set the attached proposed amendments to regulation 3304 for public hearing on January 8, 2004 and further recommends that the Board adopt the proposed amendments after hearing from the public.