

4212 PETITIONS BASED ON SUBSTANTIAL REHABILITATION

- 4212.1 A housing provider who proposes to substantially rehabilitate a housing accommodation may petition the Rent Administrator for a rent adjustment under § 214 of the Act (D.C. Official Code § 42-3502.14) (“substantial rehabilitation petition”), which shall be in the form of a rent surcharge based on the cost of the rehabilitation.
- 4212.2 A housing provider shall not file a substantial rehabilitation petition until all required building permits have been requested or obtained for the proposed improvements or renovations that may constitute a substantial rehabilitation.
- 4212.3 A housing provider shall not begin any improvement or renovation of a housing accommodation for which it seeks a rent adjustment under this section, or initiate proceedings to evict a tenant in order to substantially rehabilitate any part of a housing accommodation, without the prior approval of the Office of Administrative Hearings, or of the Rent Administrator if all affected units are vacant at the time of filing.
- 4212.4 A housing provider shall file a substantial rehabilitation petition on a form published by the Rent Administrator (“Substantial Rehabilitation Form”) and shall include with the petition the following information:
- (a) Detailed plans, specifications, and the projected total cost of the proposed improvements or renovations, in accordance with § 4212.6;
 - (b) Copies of all applications filed for required building permits for the proposed improvements or renovations, or copies of all required permits if they have been issued;
 - (c) Documentation of the assessed value of the housing accommodation as determined by the D.C. Office of Tax and Revenue, in accordance with § 4212.14;
 - (d) A schedule showing all rental units in the housing accommodation to be rehabilitated showing whether the rental unit is vacant or occupied and, if vacant, the date and cause of the housing provider’s retaking of possession;
 - (e) A schedule showing the current rent charged, as lawfully calculated and properly filed with the Rental Accommodations Division, and the proposed rent surcharge for each rental unit; and
 - (f) If any tenants will be displaced by the substantial rehabilitation, the information required by § 4212.17.

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- 4212.5 An improvement to or renovation of a housing accommodation shall be deemed a substantial rehabilitation only if the total cost for the improvement or renovation, as determined in accordance with § 4212.6, exceeds fifty percent (50%) of the assessed value of the housing accommodation, as determined in accordance with § 4212.14.
- 4212.6 The total cost of an improvement or renovation shall be the sum of:
- (a) Any costs actually incurred, to be incurred, or estimated to be incurred to make the improvement or renovation, in accordance with § 4212.8;
 - (b) Any interest that shall accrue on a loan taken by the housing provider to make the improvement or renovation, in accordance with § 4212.9; plus
 - (c) Any service charges incurred or to be incurred by the housing provider in connection with a loan taken by the housing provider to make the improvement or renovation, in accordance with § 4212.11.
- 4212.7 For the purposes of calculating interest and service charges, “a loan taken by the housing provider to make the improvement or renovation” shall mean only the portion of any loan that is specifically attributable to the costs incurred to make the improvement or renovation, in accordance with § 4212.8, and the dollar amount of that portion shall not exceed the amount of those costs.
- 4212.8 The costs incurred to make an improvement or renovation shall be determined based on invoices, receipts, bids, quotes, work orders, loan documents or a commitment to make a loan, or other evidence of expenses as the Administrative Law Judge may find probative of the actual, commercially reasonable costs.
- 4212.9 The interest on a loan taken to make an improvement or renovation shall mean all compensation paid by the housing provider to a lender for the use, forbearance, or detention of money used to make the improvement or renovation over the amortization period of the loan, in the amount of either:
- (a) The interest payable by the housing provider at a commercially reasonable fixed or variable rate of interest on a loan of money used to make the improvement or renovation, or on that portion of a multi-purpose loan of money used to make the improvement or renovation, as documented by the housing provider by means of the relevant portion of a bona fide loan commitment or agreement with a lender, or by other evidence of interest as the Administrative Law Judge may find probative; or
 - (b) In the absence of any loan commitment, agreement, or other evidence of interest, the sum of the following over a seven (7) year period:

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- (1) The average monthly bank prime loan rate established by the Federal Reserve Board in Publication H-15, Selected Interest Rates, for the week in which the substantial rehabilitation petition is filed; plus
- (2) Two percentage (2%) points or two hundred (200) basis points.

4212.10 For the purpose of § 4212.9(a), if a housing provider has obtained a loan with a variable rate of interest, the total interest payable shall be calculated using the initial rate of the loan.

4212.11 The service charges in connection with a loan taken to make an improvement or renovation shall include points, loan origination and loan processing fees, trustee's fees, escrow set up fees, loan closing fees, charges, costs, title insurance fees, survey fees, lender's counsel fees, borrower's counsel fees, appraisal fees, environmental inspection fees, lender's inspection fees (in any form the foregoing may be designated or described), and such other charges (other than interest) required by a lender, as supported by the relevant portion of a bona fide loan commitment or agreement with a lender, or by other evidence of service charges as the Administrative Law Judge may find probative of the actual, commercially reasonable costs.

4212.12 Any costs, and any interest or fees attributable to those costs, for any specific aspect or component of a proposed improvement or renovation that is not in the interest of the tenants, as provided by § 4212.13, shall be excluded from the calculation of the total cost of the improvement or renovation.

4212.13 Whether a proposed substantial rehabilitation, or any specific aspect or component of the improvement or renovation, is in the interest of the tenants shall be determined by balancing the following factors:

- (a) The existing physical condition of the rental units or housing accommodation, as shown by testimony of any witness with personal knowledge of the physical condition of the property or by reports or testimony of D.C. housing inspectors, licensed engineers, architects and contractors, or other qualified experts as to any matter outside the probable knowledge of a lay person;
- (b) Whether the existing physical condition impairs or tends to impair the health, safety, or welfare of any tenant;
- (c) Whether deficiencies in the existing physical conditions could instead be corrected by improved maintenance, repair, or capital improvement;
- (d) Whether the proposed improvements or renovations are optional or cosmetic changes; and

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- (e) The impact of the proposed rehabilitation on the tenants in terms of any inconvenience due to construction or relocation and the proposed financial costs, including whether tenants have or will have a rent burden greater than thirty percent (30%) of their monthly household incomes.

4212.14 The assessed value of a housing accommodation shall be the official assessment of the property by the D.C. Office of Tax and Revenue for real estate taxation purposes for the current tax year on the date a substantial rehabilitation petition is filed; provided, that if a new tax year begins sixty (60) days or less after the date on which a substantial rehabilitation petition is filed and the assessed value shall be the value determined for the new tax year.

4212.15 The amount of a rent surcharge authorized by a substantial rehabilitation petition for each affected rental unit in a housing accommodation shall be the lesser of:

- (a) The generally permissible amount calculated in accordance with § 4212.16; or
- (b) One hundred twenty-five percent (125%) of the rent charged for the rental unit, as lawfully calculated and properly filed with the Rental Accommodations Division, at the time the substantial rehabilitation petition is filed.

4212.16 The generally permissible amount of a rent surcharge for each affected rental unit pursuant to a substantial rehabilitation petition shall be the quotient of:

- (a) The total cost of the improvements or renovations, as provided in § 4212.6, that are in the interest of the tenants; divided by
- (b) The amortization period of the loan taken to make an improvement or renovation, as documented by the housing provider by means of the relevant portion of a bona fide loan commitment or agreement with a lender, or, in the absence of a loan commitment or agreement, a period of two hundred forty (240) months; divided by
- (c) The number of rental units in the housing accommodation.

4212.17 A housing provider who seeks authorization, pursuant to § 501(h) of the Act (D.C. Official Code § 42-3505.01(h)), to issue notices to vacate for the purposes of performing construction or other work to substantially rehabilitate a housing accommodation shall file, with the substantial rehabilitation petition, the following information:

- (a) A draft of the notice to vacate to be issued to the tenant if the petition is approved, in accordance with § 4302;

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- (b) A timetable for all aspects of the plan for substantial rehabilitation, including:
 - (1) The relocation of each tenant from the rental unit and back into the rental unit;
 - (2) The commencement of the work; and
 - (3) The completion of the work; and
- (c) A relocation plan for each tenant that provides:
 - (1) The amount of the relocation assistance payment for the rental unit, in accordance with title VII of the Act (D.C. Official Code §§ 42-3507.01 et seq.);
 - (2) A specific plan for relocating the tenant to another rental unit in the housing accommodation, or, if the housing provider states that relocation within the same building or complex is not practicable, the reasons for the statement;
 - (3) If relocation to another rental unit in the housing accommodation is not practicable, a list of units within the housing provider's portfolio of rental accommodations made available to each dispossessed tenant, or, where the housing provider asserts that relocation within the housing provider's portfolio of rental accommodations is not practicable, the justification for such assertion;
 - (4) If relocation to a rental unit pursuant to subparagraph (2) or (3) is not practicable, a list for each tenant affected by the relocation plan of at least three (3) other rental units available to rent in a housing accommodation in the District of Columbia, each of which shall be comparable to the rental unit in which the tenant currently lives; and
 - (5) A list of tenants with their current addresses and telephone numbers.

4212.18 Authorization to issue a notice to vacate for the purposes of performing construction or other work to substantially rehabilitate a housing accommodation shall be approved pursuant to a substantial rehabilitation petition only if the rehabilitation is in the interest of each tenant proposed to be displaced, in accordance with § 4212.13, taking into consideration the relocation plan for the tenant and any relocation assistance to which the tenant is entitled.

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- 4212.19 A Substantial Rehabilitation Form, as filed with the Rent Administrator, shall be accompanied by external documents to substantiate the total cost of the improvement or renovation. A housing provider who has filed a substantial rehabilitation petition shall have a continuing obligation to supplement the record of the adjudication of the petition with any new documentation reflecting the actual total cost of the improvement or renovation, until a final order approves or denies the petition or the evidentiary record of a hearing closes.
- 4212.20 A Substantial Rehabilitation Form, as filed with the Rent Administrator, shall include a statement of whether any tenant will be displaced by the substantial rehabilitation, the unit numbers in which the tenant resides, a proposed timetable and relocation plan for each tenant to be displaced, and that relocation assistance is available.
- 4212.21 After determining, in accordance with § 4208.5, that a substantial rehabilitation petition has been properly filed, the Rent Administrator shall transmit the petition to the Office of Administrative Hearings within ten (10) business days.
- 4212.22 Notwithstanding § 4212.21, if all rental units proposed to be affected by a substantial rehabilitation petition are certified by the Housing Provider to be vacant the Rent Administrator shall review the petition and supporting materials in accordance with this section and issue a final order granting or denying the petition, in whole or in part.
- 4212.23 If the Rent Administrator issues a final order denying a vacant-unit petition in whole or in part in accordance with § 4212.22, the housing provider may appeal to the Commission in accordance with § 3802. If the Commission determines that an evidentiary hearing is necessary to decide the petition, the Commission shall remand the matter to the Office of Administrative Hearings.
- 4212.24 A tenant or tenant association that appears pursuant to § 4208.11 may contest whether the substantial rehabilitation petition should be approved or denied, in whole or in part, based on the following issues:
- (a) The validity or accuracy of the calculation of the total cost of the improvement or renovation and the assessed value of the housing accommodation;
 - (b) Whether any improvement or renovation is in the interest of the tenants or affects a specific rental unit;
 - (c) Whether the housing provider has obtained all required District government permits by the time of an evidentiary hearing; provided, that the grounds for any agency's issuance or denial of a required permit shall not be contested;

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- (d) The validity or accuracy of the amount of a rent surcharge authorized for an individual rental unit in a housing accommodation;
- (e) The completeness and accuracy of any information provided to support the issuance of notices to vacate;
- (f) Whether the displacement of tenants, if any, is warranted because the improvements or renovations cannot safely or reasonably be made while a rental unit is occupied;
- (g) Whether the relocation plan, if any, is in the interest of the tenants;
- (h) Whether the housing accommodation is properly registered and the housing provider has all required business licenses;
- (i) Whether, as provided by § 4216.4, substantial violations of the Housing Regulations existed on the date the substantial rehabilitation petition was filed and have not been abated on the date of a hearing on the substantial rehabilitation petition, except as provided by § 4212.25;
- (j) Whether the substantial rehabilitation petition was filed as a retaliatory action prohibited by § 502 of the Act (D.C. Official Code § 42-3505.02) and § 4303 of this title; or
- (k) Any other violation of § 214 of the Act (D.C. Official Code § 42-3502.14) or this section.

4212.25 Notwithstanding any other provision of this chapter, a substantial rehabilitation petition may be approved if the housing accommodation is not in substantial compliance with the Housing Regulations if the improvements or renovations will correct each identified violation.

4212.26 Failure of the Rent Administrator to take any action or the Office of Administrative Hearings to issue a final order on a substantial rehabilitation petition in a timely manner shall not authorize a housing provider to initiate any alterations or renovations for which a rent surcharge is sought in the petition or to initiate proceedings to evict a tenant in order to substantially rehabilitate any part of a housing accommodation.

4212.27 A notice to vacate pursuant to § 501(h) of the Act (D.C. Official Code § 42-3505.01(h)) authorized by a substantial rehabilitation petition shall be served no less than one hundred twenty (120) days before the housing provider intends to or actually takes action to recover possession of the rental unit and shall comply with all applicable provisions of § 4302 of this title.

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- 4212.28 A housing provider who has issued notices to vacate in accordance with § 4212.27 shall obtain interim contact information for each tenant displaced by the rehabilitation and shall file the information with the Rent Administrator. The housing provider shall file a notice with the Rent Administrator when each displaced tenant retakes possession of his or her original rental unit.
- 4212.29 Within thirty (30) days of the completion of a substantial rehabilitation and the return of each displaced tenant, if any, to his or her original rental unit, a housing provider shall file an affidavit attesting to the completion with the Rent Administrator. For the purposes of § 4204.9, the date of filing of an affidavit of completion shall be deemed the date on which the rent surcharge becomes authorized, and the adjustment shall be implemented, in accordance with § 4205, within twelve (12) months of the filing of a certification of completion.
- 4212.30 A rent surcharge authorized by a final order approving an application under this section shall be implemented as a rent adjustment for an affected rental unit in accordance with § 4205 within twelve (12) months of the date of the order, including the exhaustion of any rights of appeal, but no earlier than twelve (12) months following any prior rent increase for that rental unit. Failure to implement the rent surcharge within twelve (12) months will result in forfeiture of the authorization in accordance with § 4204.9(e); provided, that if the rehabilitation of a unit renders it uninhabitable beyond the expiration of time, the rent surcharge may be implemented at the time the unit is reoccupied.

SOURCE: Notice of Final Rulemaking published at 33 DCR 1336, 1404 (March 7, 1986); as amended by Final Rulemaking published at 33 DCR 2656, 2668 (May 2, 1986); as amended by Final Rulemaking published at 68 DCR 012634 (December 3, 2021); as amended by Final Rulemaking published at 70 DCR 001710 (February 3, 2023).