

**4209 PETITIONS BASED ON CLAIM OF HARDSHIP**

- 4209.1 A housing provider who elects not to implement the rent adjustment of general applicability under § 206(b) of the Act in a particular year may petition the Rent Administrator once during the year for a rent adjustment authorized by §§ 206(c) and 212 of the Act (D.C. Official Code §§ 42-3502.06(c) & 42-3502.12) (“hardship petition”), which shall be in the form of a rent surcharge to increase the housing provider’s rate of return.
- 4209.2 The total dollar amount of all rent surcharges requested in or allowed by a hardship petition shall be no more than the amount necessary to increase the housing provider’s rate of return for the housing accommodation to twelve percent (12%), as computed in accordance with § . The total dollar amount shall be divided between all rental units in the housing accommodation so that the rent surcharge for each unit shall be an equal percentage of the rent charged.
- 4209.3 A housing provider shall be eligible to file a hardship petition if:
- (a) Twelve (12) months have elapsed since the filing of any prior hardship petition for the housing accommodation; and
  - (b) Nine (9) months have elapsed since the implementation of any rent increase, including a conditional surcharge under this section, for any rental unit in the housing accommodation.
- 4209.4 The owner of a housing accommodation situated on property that has been determined to be abandoned or a continuing nuisance to the immediate surrounding area shall not be eligible to file a hardship petition for that housing accommodation.
- 4209.5 A housing provider shall file a hardship petition on a form approved by the Rent Administrator (“Hardship Petition Form”). The submitted Hardship Petition Form shall include the required financial information in the same manner as apartment income and expense reports submitted to the Office of Tax and Revenue.
- 4209.6 The Hardship Petition Form shall contain instructions for computing the following:
- (a) The net income of the housing accommodation;
  - (b) The housing provider’s equity in the housing accommodation;
  - (c) The rate of return the housing accommodation is yielding on the housing provider’s equity;

## District of Columbia Municipal Regulations

- (d) The percentage of the rent charged for all rental units that shall be used to calculate the amount of the rent surcharge; and
- (e) The dollar amount of the rent surcharge that will be applied to each rental unit in the housing accommodation.

4209.7 The accounting method used to calculate the rate of return in a hardship petition shall be cash basis method, irrespective of the method used by the housing provider to file income taxes with the D.C. Office of Tax and Revenue.

4209.8 The rate of return for a housing accommodation shall be the quotient, expressed as a percentage, of:

- (a) The net income of the housing accommodation, in accordance with § ; divided by
- (b) The housing provider's equity in the housing accommodation, in accordance with § .

4209.9 The net income of a housing accommodation shall be computed for a period of twelve (12) consecutive months within the fifteen (15) months immediately preceding the filing of a hardship petition ("Reporting Period") and shall be the difference between:

- (a) The sum of:
  - (1) The maximum possible rental income for the housing accommodation, in accordance with § ; plus
  - (2) The maximum amount of other income that can be derived from the housing accommodation, in accordance with § ; minus
- (b) The sum of:
  - (1) The operating expenses, in accordance with §§ and 4209.13;
  - (2) The management fee, if applicable, in accordance with § ;
  - (3) Property taxes, in accordance with § ;
  - (4) Depreciation expenses, in accordance with § ;
  - (5) Vacancy losses, in accordance with § ;
  - (6) Uncollected rent, in accordance with § ; plus

## District of Columbia Municipal Regulations

### (7) Interest payments, in accordance with § .

- 4209.10 The maximum possible rental income for a housing accommodation shall be the sum of the following for all rental units, including those occupied by employees of the housing provider, for each month in the Reporting Period:
- (a) The rents charged as lawfully calculated and filed with the Rental Accommodations Division during the reporting period, plus the total amount of any authorized rent surcharges, whether or not actually demanded or received for any reason, including:
    - (1) Vacancies;
    - (2) Use of rental units for the housing provider's business purposes;
    - (3) Exemptions for elderly tenants or tenants with a disability under § 4215; or
    - (4) Non-payment of rents;
  - (b) The unimplemented amount of any rent ceiling adjustments preserved by § 206(a) of the Act (D.C. Official Code § 42-35-2.06(a)); and
  - (c) Any unimplemented rent adjustments of general applicability that were available but not taken by the housing provider during the three (3) years prior to the Reporting Period.
- 4209.11 The maximum amount of other income that can be derived from a housing accommodation during the Reporting Period shall be the sum of all income other than rent that:
- (a) Is actually derived from the housing provider's interest in the housing accommodation, including, but not limited to, fees, commissions, income from vending machines, income from laundry facilities, and income from parking and recreational facilities; and
  - (b) Can be derived from the housing provider's interest in the housing accommodation, if such amounts can be reasonably determined, including, for example, fees for unused parking spaces and recreational facilities.
- 4209.12 Except as provided by § , the operating expenses of a housing accommodation shall be the ordinary expenses required for the operation of the housing accommodation for the Reporting Period, including, but not limited to, expenses for salaries of on-site personnel, supplies, painting, maintenance and repairs, utilities, professional fees, on-site offices, and insurance; provided, that any

## District of Columbia Municipal Regulations

expense that is capital in nature shall be amortized or depreciated using the straight-line method over the useful life of the expensed asset.

- 4209.13 The operating expenses of a housing accommodation shall not include:
- (a) Membership fees in organizations established to influence legislation and regulation;
  - (b) Contributions to lobbying efforts;
  - (c) Contributions for legal fees in the prosecution of class action cases;
  - (d) Political contributions to candidates for office;
  - (e) Mortgage principal payments;
  - (f) Maintenance expenses for which the housing provider has been reimbursed by any security deposit, insurance settlement, judgment for damages, agreed-upon payments, or any other method;
  - (g) Attorney's fees charged for services connected with counseling or litigation related to actions brought by the District of Columbia government due to the housing provider's repeated failure to comply with applicable provisions of the Housing Regulations as evidenced by violation notices issued by the Department of Buildings (or the Department of Consumer and Regulatory Affairs, as applicable); or
  - (h) Any expenses for which a tenant has lawfully paid directly.
- 4209.14 The management fee of a housing accommodation shall be the amount paid to a managing agent and any pro-rated salaries of off-site employees paid by the housing provider during the Reporting Period, to the extent the duties of the employees are connected with the operation of the housing accommodation, but shall not be more than six percent (6%) of the maximum possible rental income, in accordance with § , unless the housing provider shows that all or part of the excess over six percent (6%) is reasonable in the circumstances.
- 4209.15 The property taxes for a housing accommodation shall be the amount levied by the District government for real property tax on the housing accommodation during the Reporting Period or, if the Reporting Period includes multiple tax years, the pro-rated portion of the real property tax for each tax year within the Reporting Period.
- 4209.16 The depreciation expenses for a housing accommodation shall be any depreciation expenses reflected in decreased real property tax assessments for the housing accommodation, in accordance with § .

## District of Columbia Municipal Regulations

- 4209.17 The vacancy losses for a housing accommodation shall be the total of the maximum, lawful rents for each vacant rental in the housing accommodation that was actively offered for rent during the Reporting Period, as properly filed with the Rental Accommodations Division, during the Reporting Period; provided, that:
- (a) No amount shall be included as a vacancy loss for units occupied by a housing provider or his or her employees or otherwise not offered for rent; and
  - (b) The total amount of the vacancy losses shall not be more than six percent (6%) of the maximum possible rental income of the housing accommodation, in accordance with § , except for good cause shown.
- 4209.18 The uncollected rent for a housing accommodation shall be any amount of rent or other income that can be derived from the housing accommodation that has been lawfully demanded from a tenant thirty (30) days or more prior to the filing of a hardship petition but not received; provided, that a housing provider shall file notice with the Rent Administrator or Office of Administrative Hearings if, at any time prior to the issuance of a final order on the hardship petition, any amount claimed as uncollected rent is received.
- 4209.19 The interest payments for a housing accommodation shall be the amount of interest paid during the Reporting Period on a mortgage or deed of trust on the housing accommodation; provided, that the interest rate on the mortgage or deed of trust is commercially reasonable.
- 4209.20 A housing provider's equity in a housing accommodation shall be the difference between:
- (a) The assessed value of the housing accommodation, in accordance with § ; minus
  - (b) The total value of all encumbrances on the housing accommodation, in accordance with § .
- 4209.21 The assessed value of a housing accommodation shall be the official assessment of the property by the District government during the Reporting Period or if the Reporting Period includes multiple tax years, the weighted average of the assessed value for each tax year within the Reporting Period.
- 4209.22 The total value of all encumbrances on a housing accommodation shall include all mortgages, liens, trusts, and secured claims, whether incurred for or directly related to the purchase, the capital improvement, the substantial rehabilitation of

## District of Columbia Municipal Regulations

the housing accommodation, or any other financing for the housing provider or another person.

- 4209.23 The Hardship Petition Form shall require a housing provider to list and value all current encumbrances and certify that the status of the property, as presented, is correct and that no encumbrance has been removed temporarily or refinanced, shifted, or otherwise concealed so as to increase the housing provider's apparent equity in the housing accommodation and thereby lower the apparent rate of return on the housing accommodation.
- 4209.24 The Rent Administrator or the Office of Administrative Hearings may require the housing provider to submit verification of the present or historical status of any encumbrances on the property, and shall require verification of the status of encumbrances if there has been any change in the ownership of the housing accommodation, or the ownership of any business entity with an ownership interest in the housing accommodation, within the three (3) years preceding the filing of the hardship petition.
- 4209.25 A Hardship Petition Form, as filed with Rent Administrator, shall be accompanied by external financial documents to substantiate the income and operating expense schedule of the housing accommodation. The documents shall include the following:
- (a) Copies of bills, invoices, statements, or other requests for payment related to the housing accommodation paid during the Reporting Period;
  - (b) Copies of cancelled checks or other records of electronic transfers for the housing accommodation during the Reporting Period;
  - (c) Copies of bank statements for the housing providers;
  - (d) Copies of ledgers, journals, or other internally generated records of the financial transactions of the housing accommodation during the Reporting Period; and
  - (e) A worksheet in Microsoft Excel or compatible format showing the expenses paid during the Reporting Period that are substantiated by the accompanying documents.
- 4209.26 Any expense or other deduction listed in § (b) shall be disallowed from the calculation of a housing provider's net income and rate of return if the housing provider does not prove its entitlement to the deduction by a preponderance of the evidence on the record.

## District of Columbia Municipal Regulations

- 4209.27 At the time a hardship petition is filed, unless filing electronically through the internet-accessible database pursuant to § 3901.15, the housing provider shall submit the following to the Rent Administrator:
- (a) Two (2) copies of the Hardship Petition Form and the financial information required by § ;
  - (b) Envelopes addressed to the tenant(s) of each rental unit by name for each affected rental unit in the housing accommodation with pre-paid first class postage;
  - (c) Copies of the certificate of occupancy and housing business license (where applicable), and proof of payment of the annual registration fee; and
  - (d) A copy of the rent roll.
- 4209.28 After determining, in accordance with § 4208.5, that a hardship petition has been properly filed, the Rent Administrator shall mail notice to each affected rental unit that the petition is under review including:
- (a) A copy of the Hardship Petition Form filed by the housing provider;
  - (b) Notice that the tenants will have the right to contest or oppose the petition by filing exceptions and objections, individually or through a tenant association, and that the housing provider shall have the right to support or defend the petition before the Office of Administrative Hearings as provided by §§ 4208.11 - 4208.17;
  - (c) A copy of the form published by the Rent Administrator regarding exemptions from rent surcharges as described in § 4208.10; and
  - (d) A statement that a conditional rent surcharge may be implemented in accordance with § .
- 4209.29 The Rent Administrator shall promptly and without cost make all supporting documentation for a hardship petition available in electronic format to any tenant of the affected housing accommodation or any person acting on behalf of a tenant.
- 4209.30 Within thirty (30) days of the filing of the hardship petition, the Rent Administrator shall issue an audit report, prepared by a Certified Public Accountant, on the hardship petition and the supporting documentation filed in accordance with § (“Audit Report”) and a proposed order that shall state whether the Audit Report supports the approval of the hardship petition, in whole or in part, and the amount of the rent surcharge for each affected rental unit that would be authorized (“Proposed Order”).

## District of Columbia Municipal Regulations

- 4209.31 Prior to the issuance of an Audit Report and Proposed Order, the Rent Administrator shall issue an order staying or extending the time before a conditional rent surcharge may be implemented in accordance with § if the Rent Administrator determines that:
- (a) The housing provider has failed to comply with the requirements of this section regarding the completion of the Hardship Petition Form or submission of supporting documentation; or
  - (b) Further supporting documentation is necessary to review the validity of the rate of return claimed in the hardship petition.
- 4209.32 If the Rent Administrator has issued a stay or extension order pursuant to § and the housing provider continuously fails to comply with the requirements of that order, the Rent Administrator may dismiss the hardship petition.
- 4209.33 The Rent Administrator shall serve the housing provider and each affected tenant with the Audit Report and Proposed Order in the same manner and including the same information provided by § , and the housing provider and each affected tenant, or a tenant association representing affected tenants, shall have thirty (30) days to file exceptions and objections to the Audit Report or Proposed Order in accordance with § .
- 4209.34 If no party files exceptions and objections to the Audit Report or Proposed Order within the time provided by § , the Proposed Order shall become final. If exceptions and objections are filed, the housing provider and each tenant or tenant association that has filed exceptions and objections, shall have the right to a hearing before the Office of Administrative Hearings on the contested issues.
- 4209.35 Exceptions and objections filed pursuant to § may contest whether a hardship petition should be approved or denied, in whole or in part, based on the following issues:
- (a) The accuracy and verifiability of the income and expense/deduction data used to calculate the net income of the housing accommodation;
  - (b) The accuracy and verifiability of the financial information used to show the assessed value and encumbrances of the housing accommodation;
  - (c) The accuracy of the calculations made by the housing provider in completing the Hardship Petition Form or the Rent Administrator in completing the Audit Report;



## District of Columbia Municipal Regulations

- (d) Whether any operating expense is extraordinary and should therefore be excluded or averaged over multiple years, or is capital in nature and should therefore be amortized or depreciated over its useful life;
- (e) The existence of a valid registration statement or business license for the housing accommodation;
- (f) Whether, as provided by § 4216.4, substantial violations of the Housing Regulations existed on the date the hardship petition was filed and have not been abated on the date of a hearing on the hardship petition;
- (g) Whether the hardship 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
- (h) Any other violation of the requirements provided by §§ 206(c) or 212 of the Act (D.C. Official Code §§ 42-3502.06(c) or 42-3502.12) or this section.

4209.36 After exceptions and objections have been filed and a hardship petition transferred to the Office of Administrative Hearings, the Administrative Law Judge may issue an order containing findings of fact or conclusions of law as to any issue of error identified by the parties or Administrative Law Judge with respect to the Audit Report and remanding the hardship petition to the Rent Administrator for a revised Audit Report.

4209.37 Within ninety (90) days of the filing of a hardship petition that claims a negative net income in accordance with § , if the Office of Administrative Hearings has not issued a final order approving or denying the hardship petition, in whole or in part, or if such an order is stayed by an appeal to the Commission or the District of Columbia Court of Appeals, the housing provider may implement a conditional rent surcharge for each affected rental unit; provided, that any extension of time ordered pursuant to § shall be added to the number of days after which the housing provider may implement the conditional rent surcharge.

4209.38 A conditional rent surcharge authorized by § shall be no greater than the lesser of:

- (a) Five percent (5%) of the rent charged for an affected rental unit; or
- (b) The amount authorized by a provisional order issued under § .

4209.39 If a hearing has been held on a hardship petition by the Office of Administrative Hearings, the Administrative Law Judge may issue a provisional order approving or denying the petition, in whole or in part, no less than ten (10) days before the expiration of time under § ; provided, that the Administrative Law Judge may

## District of Columbia Municipal Regulations

issue an order extending the time provided by § if he or she determines that the housing provider is responsible for any unreasonable delay in holding a hearing.

- 4209.40 A conditional rent surcharge pursuant § , if allowed, shall be implemented in accordance with §§ 4205.4 and 4205.5, and copies of the sample notice of rent increase and affidavit of service required by § 4205.4(d) shall be transmitted by the Rental Accommodations Division to the Office of Administrative Hearings and entered into the record of the pending hardship petition.
- 4209.41 A tenant may contest the implementation of a conditional rent surcharge under § , but not the merits of the related, pending hardship petition, by filing a separate tenant petition with the Rent Administrator pursuant to § 4214. In the discretion of the Office of Administrative Hearings, a tenant petition on a conditional surcharge and the related, pending hardship petition may be consolidated or separately adjudicated in order to provide expedited resolution regarding the current rents charged in the housing accommodation.
- 4209.42 If a conditional rent surcharge has been implemented pursuant to § , and a final order of the Rent Administrator, the Office of Administrative Hearings, or a decision by the Commission in an appeal approves only in part or denies the related hardship petition, the housing provider shall immediately implement a rent rollback in the amount by which the conditional surcharge exceeds the approved amount, if any, of the hardship petition, and the housing provider shall, within twenty one (21) days, refund to each affected tenant any excess rent demanded, received, or charged while the hardship petition has been pending, unless a tenant elects in writing within fourteen (14) days to receive the balance owed as a rent credit. Any agreement to receive a rent credit shall contain an express, written, knowing waiver of the right to receive a rent refund. A final order approving in part or denying a hardship petition shall constitute a final order to pay any rent refund and implement any rent rollback required by this section.
- 4209.43 Any rent surcharge that is authorized by a final order approving a hardship petition shall be implemented in accordance with § 4205 within twelve (12) months of the date on which the order becomes final, including the exhaustion of any rights of appeal, but no earlier than twelve (12) months following any prior rent increase for an affected rental unit, other than a conditional increase pursuant to this section. Failure to implement the rent adjustment within twelve (12) months will result in forfeiture of the authorization for adjustment in accordance with § 4204.9(e).

SOURCE: Notice of Final Rulemaking published at 33 DCR 1336, 1393-1398 (March 7, 1986); as amended by: Notice of Final Rulemaking published at 33 DCR 2656, 2666-67 (May 2, 1986); and Notice of Final Rulemaking published at 33 DCR 3179 (May 23, 1986); as amended by Notice of Final Rulemaking published at 49 DCR 7487 (August 2, 2002); 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).