

4105 EXCLUSIONS FROM COVERAGE BY THE ACT

4105.1 A rental unit shall be excluded from coverage of the Act, pursuant to § 205(e) of the Act (D.C. Official Code § 42-3502.05(e)), under the following circumstances:

- (a) If the rental unit is operated by a foreign government as a residence for diplomatic personnel;
- (b) If the rental unit is operated by a hospital, convalescent, nursing or personal care home, or other entity that has as its primary purpose providing diagnostic care and treatment of disease, including therapeutic transitional treatment facilities certified in accordance with D.C. Official Code § 44-1204, and the rental unit is occupied or intended for occupancy by a recipient of the diagnostic care or treatment of disease; or
- (c) If the rental unit is or is part of a dormitory as defined in § 3899.2, and the rental unit is occupied or intended for occupancy by a matriculating student.

4105.2 A rental unit that is used or intended for use as long-term temporary housing under § 205(e)(4) of the Act (D.C. Official Code § 42-3502.05(e)(4)) may be excluded from coverage by the Act only with the prior approval of the Rent Administrator if the housing provider files a request for an order of exclusion (“non-profit charitable application”) in accordance with § 4105.3.

4105.3 A non-profit charitable application shall be filed in duplicate and shall include the following:

- (a) The name and street address (not including mailbox services or post office box addresses) of the applicant housing provider, and documentation of the applicant’s exemption from federal income tax under § 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3)) and exemption from the District of Columbia franchise tax under D.C. Official Code § 47-1802.01(c)(3);
- (b) A schedule identifying each rental unit covered by the application, whether the rental unit is vacant or occupied and, if occupied, the name of the tenant and the rent for the rental unit, if any;
- (c) The plan of comprehensive social services to be offered by the applicant housing provider to the tenant (“Charitable Program”), listing in detail the services to be provided and the obligations to be assumed by the tenant and the applicant housing provider, and the criteria for qualification to be a tenant of a rental unit excluded from coverage under the Act;

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- (d) A schedule of proposed rents for each rental unit included in the application, including the proposed rent for each rental unit if the tenant does not elect to participate in or does not qualify for the Charitable Program.

4105.4 Upon receipt of a properly executed and filed non-profit charitable application, the Rent Administrator shall promptly notify in writing the tenant of each occupied rental unit affected by the application of the following:

- (a) The pendency of the application;
- (b) The tenant's right to participate voluntarily in the Charitable Program, in which case the tenant's rental unit may be excluded from coverage by the Act, or to decline to participate in the Charitable Program, in which case the tenant's rental unit shall be covered by the Act; provided, that no tenant may elect to participate in the proposed plan if the tenant does not meet the income requirements of § 4105.7(b); and
- (c) The tenant's right to oppose or contest the non-profit charitable application by filing written exceptions and objections with the Rent Administrator.

4105.5 The notice required by § 4105.4 shall be in a form approved by the Rent Administrator, and shall:

- (a) Explain the Charitable Program and the effect of the proposed exclusion in sufficient detail to permit the tenant to make an informed choice; and give all affected tenants not less than thirty (30) days from the service of the notice in which to make the election to participate in the Charitable Program or not and to file written exceptions and objections, if any;
- (b) State clearly that an affirmative election to participate in the Charitable Program is irrevocable for the duration of the tenancy;
- (c) Provide a space for the tenant to indicate his or her irrevocable election to participate or not in the Charitable Program, or to decline to participate and state his or her exceptions and objections, if any, to the Charitable Program; and
- (d) Be returnable to the Rent Administrator over the tenant's signature.

4105.6 Upon consideration of properly filed exceptions and objections in accordance with § 4105.5(a), the Rent Administrator shall either:

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- (a) Approve a non-profit charitable application for each vacant rental unit and each rental unit occupied by a tenant who elects to participate in the Charitable Program; or
- (b) Dismiss a non-profit charitable application for each rental unit occupied by a tenant who elects not to participate in the Charitable Program or who fails to make an election within the time provided; provided, that the Rent Administrator shall grant exclusion to a covered, occupied rental unit at any time if the eligible tenants under § 4105.7(b) notify the Rent Administrator in writing that they elect to participate in the Charitable Program.

4105.7 The Rent Administrator shall approve a non-profit charitable application and issue an order of exclusion only if the Rent Administrator determines the following:

- (a) The rental unit shall be operated under the Charitable Program;
- (b) The rental unit shall be occupied by a family of one (1) or more members that has a household income less than fifty percent (50%) of the median income in the District of Columbia for a family of the same size; or a family who previously indicated agreement to participate in the Charitable Program under the Act or any predecessor law and met the income requirements at the time of the previous election;
- (c) The rental unit is occupied as long-term temporary housing; and
- (d) The applicant housing provider is recognized as a non-profit charitable corporation by the District of Columbia and federal governments.

4105.8 An order by the Rent Administrator denying a non-profit charitable application may be appealed to the Commission within ten (10) business days of its issuance, in accordance with Chapter 38 of this title.

4105.9 A housing provider who claims the non-profit charitable exclusion shall be subject to the registration requirements of this chapter and all other requirements of the Act until a final order of exclusion is issued.

4105.10 A housing provider who fails to substantially comply with the terms of an order of exclusion shall not be excluded from coverage of the Act. If a determination is made after any hearing on the record that a housing provider has continuously or repeatedly failed to substantially comply with the terms of an exclusion order, the Rent Administrator may rescind the exclusion order and require the housing provider to reapply for exclusion or register the housing accommodation under the Act.

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- 4105.11 At the time a prospective tenant files an application to lease any rental unit covered by an exclusion order, or, if no application is required, prior to the execution of, or oral agreement to, a lease or rental agreement, the housing provider shall provide the tenant with a copy of the final exclusion order issued by the Rent Administrator.
- 4105.12 Upon either the dissolution of the housing provider's non-profit status exemption from federal income tax under § 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3)) and exemption from the District of Columbia franchise tax under D.C. Official Code § 47-1802.01(c)(3) or termination of the Charitable Program, each rental unit shall be covered by the registration requirements of this chapter and all other requirements of the Act.
- 4105.13 Upon the transfer of a Charitable Program from the housing provider to another non-profit organization, the new housing provider must file a non-profit charitable application in accordance with § 4105.3 and comply with the requirements of this chapter.

SOURCE: Notice of Final Rulemaking published at 33 DCR 1336, 1378 (March 7, 1986); as amended by Notice of Final Rulemaking published at 33 DCR 2656, 2660 (May 2, 1986); as amended by Final Rulemaking published at 68 DCR 012634 (December 3, 2021).