

## **3802 FILING AND ARGUING APPEALS**

- 3802.1 Any party aggrieved in whole or in part by a final order of the Rent Administrator or the Office of Administrative Hearings on a matter arising under the Act may obtain review of the order by filing a notice of appeal with the Commission.
- 3802.2 An aggrieved party shall file a notice of appeal within ten (10) business days of the issuance of a final order; provided, that if the final order has been served on the party by U.S. mail, an additional five (5) calendar days shall be added to the time to file an appeal. The filing of a notice of appeal by one party shall not extend the time for any other party to file its own notice of appeal (a cross-appeal).
- 3802.3 The filing of a notice of appeal from a final order removes jurisdiction over the matter from the Rent Administrator or the Office of Administrative Hearings, except as follows:
- (a) If a timely motion for reconsideration is also filed:
    - (1) If the motion for reconsideration of a final order is not granted, the Commission shall not take jurisdiction over the matter, and the time to file a notice of appeal shall not begin to run, until the motion for reconsideration has been denied by order of the Rent Administrator or the Office of Administrative Hearings, or by the expiration of time pursuant to § 3924.2 or 1 DCMR § 2938.1, respectively; provided, that a timely notice of appeal that was filed prior to the denial of the motion for reconsideration need not be refiled; or
    - (2) If the motion for reconsideration of a final order is granted in whole or in part, only the order granting reconsideration shall be final and appealable, and the time to file a notice of appeal shall begin to run from the date reconsideration is granted, regardless of whether a party has filed a notice of appeal prior to reconsideration;
  - (b) The Office of Administrative Hearings shall retain jurisdiction to accept a timely motion for attorney fees, but shall not decide the motion until all appeals of the final order are exhausted and the prevailing party determined; and
  - (c) The Rent Administrator or Office of Administrative Hearings shall retain jurisdiction to accept a motion for relief from judgment or for a new hearing and shall certify the consideration or disposition of a motion to the Commission so that the Commission may proceed with, stay, remand, or dismiss the appeal without prejudice, as appropriate.

## District of Columbia Municipal Regulations

- 3802.4 A notice of appeal shall be served on opposing parties prior to or at the same time that it is filed with the Commission and shall contain proof of service as required by § 3803.7. If an opposing party had an attorney or other representative of record in the proceeding before the Rent Administrator or Office of Administrative Hearings, service shall be made upon both the party and also the representative unless the representative entered a limited appearance or withdrew the appearance.
- 3802.5 A notice of appeal shall be formatted in accordance with § 3801.12, and shall contain the following:
- (a) The name and address of the appellant and the status of the appellant (*e.g.*, housing provider, tenant, or intervenor), the Rental Accommodations Division or Office of Administrative Hearings case number, and the date of the Rent Administrator's or Office of Administrative Hearings' order appealed from;
  - (b) A clear and concise statement of the alleged error(s) in the order of the Rent Administrator or the Office of Administrative Hearings; and
  - (c) All other information required by § 3801.13.
- 3802.6 The filing of a notice of appeal of a final order of the Rent Administrator or Office of Administrative Hearings shall stay the effect of the order in accordance with § 3805.
- 3802.7 After a notice of appeal has been filed, the Clerk shall request that the Rental Accommodations Division or the Office of Administrative Hearings certify and transmit the official record of the matter in accordance with § 3804.
- 3802.8 After the Clerk has requested the official record of a case, the Clerk may issue an order of the Commission scheduling the case for mediation in accordance with § 3829.4.
- 3802.9 After the Clerk receives the certified record of a case, the Clerk shall issue an order of the Commission setting dates for briefing and oral argument ("Scheduling Order") as follows, unless an extension of time is granted in accordance with § 3815:
- (a) The appellant (or cross-appellee) may file an initial brief on or before a date no more than thirty (30) days from the issuance of the Scheduling Order;
  - (b) The appellee (or cross-appellant) may file a responsive brief on or before a date no more than thirty (30) days from the date the initial brief is due;

## District of Columbia Municipal Regulations

- (c) The appellant (or cross-appellee) may file a reply to the responsive brief on or before a date no more than ten (10) days from the date the responsive brief is due; and
- (d) Oral argument in accordance with § 3819 shall be scheduled for a date no less than fifteen (15) days from the date the reply is due.

3802.10 Arguments submitted to the Commission shall be as follows:

- (a) An initial brief shall contain a statement of the issues raised in the notice of appeal and, with respect to each issue, a discussion of the party's position and citations to the relevant laws, cases, statutes, regulations, and parts of the record that support the argument;
- (b) A responsive brief shall contain a statement of the arguments made in the initial brief that the party wishes to rebut and, with respect to each argument, a discussion of the party's counter-arguments and citations to the relevant laws, cases, statutes, regulations, and parts of the record that support the counter-argument, and, in the event of a cross-appeal, shall include argument as appropriate to an initial brief by the cross-appellant;
- (c) A reply shall contain no more than a statement of the arguments made in the responsive brief that the party wishes to rebut and with respect to each argument, a discussion of the party's counter-arguments and citations to the relevant laws, cases, statutes, regulations, and parts of the record that support the counter-argument; and
- (d) Oral argument may address any issue raised on appeal or addressed in any filing previously submitted.

3802.11 Failure to file any brief permitted by this section shall not waive a party's rights or position on any issue raised in a notice of appeal. However, if a party files a brief and does not address all issues raised in its own notice of appeal, the party will be deemed to have waived any issue not addressed.

3802.12 No party shall file any supplemental brief or points of authority except:

- (a) By leave of the Commission for good cause shown;
- (b) Upon the issuance of a new, relevant decision or order by a court or agency in the District of Columbia after the time to file any brief otherwise permitted has elapsed;

## District of Columbia Municipal Regulations

- (c) Upon a relevant development in a related judicial or administrative proceeding involving one or more parties to the matter before the Commission; or
- (d) By order of the Commission issued on its own initiative.

- 3802.13 At any time before an initial brief is due pursuant to a Scheduling Order, any party may move for summary affirmance or reversal of the final order being appealed if the basic facts are both uncomplicated and undisputed and the decision being appealed rests on a narrow and clear-cut issue of law. The filing of a motion for summary disposition shall stay the deadlines provided in a Scheduling Order, unless otherwise ordered by the Commission. A party may cross-move for summary disposition in lieu of a response to a motion for summary disposition. A party that moves for summary disposition may indicate in its motion that, if summary disposition is denied, the motion may be treated as the party's brief.
- 3802.14 At any time but no later than ten (10) days after a reply is due pursuant to a Scheduling Order, any party may move to have the appeal submitted for the Commission's decision on the papers without oral argument. If and only if all parties agree, the case will be deemed submitted on the scheduled date of the hearing or, if no Scheduling Order has been issued yet, a Scheduling Order shall be issued stating that the case will be deemed submitted the day after the reply is due. A motion to submit on the papers shall not waive the right to present oral argument if the opposing party does not agree or the motion is denied.
- 3802.15 A party's failure to appear for a scheduled oral argument may result in sanctions, including dismissal of an appeal, in accordance with § 3819.
- 3802.16 The Commission, on its own initiative or on the motion of an appellee, may dismiss an appeal if the appellant fails to comply with the requirements of §§ 3802.2, 3802.3(a), 3802.4, or 3802.5; provided, that an order determining that a notice of appeal does not contain a clear and concise statement of error as required by § 3802.5(b) shall be issued only by a quorum of the Commission. The Commission shall dismiss an appeal if it becomes apparent at any time that the Commission lacks jurisdiction.

SOURCE: Notice of Final Rulemaking published at 33 DCR 1336, 1337-39 (March 7, 1986); as amended by Notice of Final Rulemaking published at 33 DCR 2656 (May 2, 1986); as amended by Final Rulemaking published at 68 DCR 012634 (December 3, 2021).