

4213 RENT ADJUSTMENTS BY VOLUNTARY AGREEMENT

4213.1 Seventy percent (70%) or more of the tenants of a housing accommodation, not including tenants of units exempt from the Rent Stabilization Program for any reason under § 4106, may enter into a voluntary agreement with the housing provider that, subject to the administrative approval, may:

- (a) Establish the rents for rental units in the housing accommodation;
- (b) Alter the provision or levels of related services or facilities; or
- (c) Provide for capital improvements or the performance of deferred, ordinary maintenance or repairs.

4213.2 A housing provider, a tenant, or a tenant association shall initiate an application for administrative approval of a voluntary agreement by filing a proposed voluntary agreement with the Rent Administrator (“Proposed Voluntary Agreement”), using a form published by the Rent Administrator and attaching any additional information required by § 4213.3. The form published by the Rent Administrator shall include a list of sources of technical assistance and resource support for housing providers and tenants.

4213.3 A Proposed Voluntary Agreement, when filed with the Rent Administrator and served in accordance with §§ 4213.4, shall include:

- (a) The current rent charged, as lawfully calculated and properly filed with the Rental Accommodations Division, and the proposed rent for each rental unit, including the proposed dollar amount and percentage of each rent adjustment;
- (b) The current and proposed provision or levels of related services or facilities;
- (c) Any provisions for capital improvements or performance of deferred, ordinary maintenance or repairs, including the scope and costs of the work to be performed;
- (d) All other conditions by which the tenants and housing provider will be bound, including:
 - (1) Any consideration or promises exchanged to induce the approval of any party to the voluntary agreement and copies of any written agreement(s) to those conditions; and
 - (2) Any other contracts or agreements that are conditioned on the signing or approval of the voluntary agreement, including

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agreements for the exercise, waiver, or assignment of rights under the Tenant Opportunity to Purchase Act of 1980 (D.C. Law 3-86; D.C. Official Code §§ 42-3404.01 et seq.) or for the settlement or dismissal of any pending or anticipated civil or administrative cases or claims, and copies of any such contracts or agreements;

- (e) A list of all rental units, including vacant units, noting whether the rental unit is covered by the Rent Stabilization Program or exempt, and all tenants in the housing accommodation by name and rental unit number or identifying letter, including whether the resident(s) of any unit are employees of the housing provider, and, for covered rental units, a space for each tenant's signature and telephone number and a space for each tenant to approve or disapprove of the agreement;
- (f) A list of any rental units for which the housing provider has notice that the unit is occupied by an elderly tenant or tenant with a disability, the name of each tenant in the unit, and the current rent charged for the unit;
- (g) A timeline for the commencement and completion of any work to be performed through the voluntary agreement, which may be estimated and nonbinding if a binding timeline is not a term of the agreement; and
- (h) A copy of D.C. Official Code § 42-3502.15 and this section.

4213.4 Prior to or simultaneously with the filing of a Proposed Voluntary Agreement with the Rent Administrator, the party initiating an application shall:

- (a) Serve a copy of the Proposed Voluntary Agreement upon each tenant in the affected housing accommodation, and the housing provider if the initiating party is not the housing provider, accompanied by a letter briefly explaining the purpose of the application, stating the amount of the proposed rent adjustment for the recipient unit, if any, and notifying the tenant of the opportunity to contest the application provided by this section; and
- (b) Transmit a copy of the Proposed Voluntary Agreement to the Office of the Tenant Advocate and the Housing Provider Ombudsman.

4213.5 Within five (5) business days of the receipt of a Proposed Voluntary Agreement, the Rent Administrator shall make a preliminary determination that the application complies with the filing requirements of § 4213.3 and the service requirements of § 4213.4 and, if so, mail notice to the tenant of each affected rental unit, and the housing provider, if the initiating party is not the housing provider, in accordance with § 4213.8.

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- 4213.6 If the Rent Administrator determines that an application for approval of a voluntary agreement was not initiated in compliance with the filing requirements of § 4213.3, the Rent Administrator, in his or her discretion, shall either:
- (a) Dismiss the application without prejudice; or
 - (b) Grant the initiating party leave to amend the application, in which case the Proposed Voluntary Agreement shall be deemed filed on the date it is amended.
- 4213.7 If the Rent Administrator determines that an initiating party has not complied with the service requirements of § 4213.4, the Rent Administrator, in his or her discretion, shall either:
- (a) Dismiss the application without prejudice; or
 - (b) Deem the Proposed Voluntary Agreement to be filed on the date the initiating party demonstrates compliance with the service requirements.
- 4213.8 After the proper filing of a Proposed Voluntary Agreement, the Rent Administrator shall issue a brief notice of the following in accordance with § 4213.5:
- (a) The date of filing of the application;
 - (b) The time periods provided by this section for negotiation, revision, and signing of the voluntary agreement;
 - (c) That any affected person may contest the application as provided in 4213.19 and the time period to do so; and
 - (d) The process to claim an exemption as an elderly tenant or tenant with a disability or to waive that exemption under § 224 of the Act (D.C. Official Code § 42-3502.24) and § 4215 of this chapter.
- 4213.9 The housing provider and each tenant shall have a minimum of thirty (30) days from the date a Proposed Voluntary Agreement is filed and properly served to consider the agreement and confer with other parties (“Cooling-off Period”) before any revised terms may be filed with the Rent Administrator; provided, that this time may be extended, within the discretion of the Rent Administrator, if time is needed to receive or review applications for exemptions for elderly tenants or tenants with a disability in accordance with § 4215.19, or if the Rent Administrator determines that such time is appropriate for further negotiations. Housing providers and tenants are encouraged to enter into face-to-face negotiations to discuss the terms of a voluntary agreement during this time.

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- 4213.10 If the housing provider and tenants seek to negotiate changes to a Proposed Voluntary Agreement and are desirous of achieving a successful agreement, the housing provider or any tenant may seek the confidential assistance of the Conciliation Service of the Rental Accommodations Division, as established under § 503 of the Act (D.C. Official Code § 42-3505.03) and § 3913 of this title.
- 4213.11 The Rent Administrator, in his or her discretion, and upon his or her own initiative or upon the request of a party, may call for a meeting to discuss the terms of a Proposed Voluntary Agreement, including but not limited to the criteria for approval or disapproval of a voluntary agreement, so long as the Rent Administrator determines that the meeting should not be conducted as a mediation or conciliation pursuant to § 4213.10.
- 4213.12 After the expiration of the Cooling-off Period, the initiating party may begin collecting signatures of tenants to approve or reject the Proposed Voluntary Agreement, including any modifications made during the Cooling-off Period. If the version circulated for signatures is different from the initial Proposed Voluntary Agreement, the initiating party shall also file a copy of the modified Proposed Voluntary Agreement with the Rent Administrator including all information required by § 4213.3, other than paragraph (h). No tenant shall be requested to sign a modified Proposed Voluntary Agreement without being notified in writing that modifications have been made since the original filing and being given an opportunity to review the entire agreement. All signatures given to approve or reject the Proposed Voluntary Agreement shall be in ink; electronic signatures shall not be valid.
- 4213.13 A signature given to approve a Proposed Voluntary Agreement shall be valid only if it is given subsequent to and no more than sixty (60) days after the end of the Cooling-off Period (“Signature Collection Period”). Before the end of the Signature Collection Period, the initiating party may request, no more than once, that the Rent Administrator extend the time, by no more than thirty (30) days, for good cause shown.
- 4213.14 Agents or employees of the housing provider, or any person with a direct or indirect interest in the housing accommodation, as defined in §§ 4107.8-4107.12, residing in the housing accommodation shall not be eligible to sign a voluntary agreement and shall not be considered in either the numerator or denominator for calculating whether seventy percent (70%) of the tenants approve of the Proposed Voluntary Agreement.
- 4213.15 No more than three (3) business days after the end of the Signature Collection Period, the initiating party shall file with the Rent Administrator a copy of the Proposed Voluntary Agreement accompanied by all signatures that have been obtained (“Final Voluntary Agreement”).

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- 4213.16 A Final Voluntary Agreement, when filed with the Rent Administrator, shall include:
- (a) All the terms and information required by § 4213.3, other than paragraph (h);
 - (b) A certification that the agreement was entered into voluntarily and that no form of duress, harassment, intimidation, coercion, fraud, deceit, or misrepresentation of material fact or law was employed by any party involved in securing any signature;
 - (c) A certification that the agreement is complete and includes all terms and conditions by which the housing provider and any tenant is bound, that no further consideration or promises have been exchanged or provided to induce any party to sign the Proposed Voluntary Agreement, and that all parties have signed the same, complete agreement;
 - (d) The signatures of:
 - (1) The housing provider;
 - (2) Each tenant agreeing to the terms of the voluntary agreement, which shall be not less than seventy percent (70%) of the eligible tenants; and
 - (3) Each tenant electing to sign to indicate his or her disapproval of the terms of the voluntary agreement;
 - (e) A certification that the filing party made a good faith effort to obtain the signature, whether agreeing to or disapproving of the Proposed Voluntary Agreement, of each tenant for whom a signature is not filed, or that a resident is an employee of the housing provider and disqualified from signing, or that the rental unit is exempt from rent stabilization; and
 - (f) A certification that a translated copy of each required form published by the Rent Administrator and each document required by paragraph (a) has been provided to each tenant that the initiating party knows or reasonably should know does not speak English as their primary language and who has a limited ability or no ability to read, speak, write, or understand English, if such tenant's primary language is Spanish, Chinese, Vietnamese, Korean, French, or Amharic.
- 4213.17 After the filing of a Final Voluntary Agreement, the Rent Administrator shall dismiss, with or without prejudice, without a hearing, any application for approval of a voluntary agreement that has not complied with the requirements of §§ 4213.2-4213.16.

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- 4213.18 Pursuant to § 215(c) of the Act (D.C. Official Code § 42-3502.15(c)), if a Final Voluntary Agreement is filed with the Rent Administrator that is not denied under § 4213.17, and the only terms of the agreement are to adjust the rent for each rental unit within a housing accommodation by the same, specified percentage, notwithstanding any exemption provided by § 224(i) of the Act (D.C. Official Code § 42-3502.24(i)), the Rent Administrator shall issue a final order approving the voluntary agreement and serve the order upon the housing provider and each affected tenant. If the Final Voluntary Agreement contains terms to any other effect, the Rent Administrator shall serve notice on each tenant and the housing provider that the Final Voluntary Agreement has been filed and giving notice of the opportunity to file exceptions and objections in accordance with § 4213.19.
- 4213.19 Within thirty (30) days of the service of notice of the filing of a Final Voluntary Agreement, the housing provider and any tenant of the affected housing accommodation may file with the Rent Administrator a clear and concise statement of exceptions and objections to the approval of the application.
- 4213.20 Exceptions and objections filed pursuant to § 4213.19 may contest whether the application should be approved or denied based on the following issues:
- (a) Whether the initiating party complied with all requirements of §§ 4213.2-4213.16 and whether any failure of compliance was remedied;
 - (b) Whether the application must be denied for any reason provided in § 4213.21;
 - (c) Whether the housing accommodation is properly registered and the housing provider has all required business licenses;
 - (d) Whether, pursuant to § 4216.4, substantial violations of the Housing Regulations existed on the date that the application for approval of the voluntary agreement was initiated and have not yet been abated;
 - (e) Whether the voluntary agreement was filed as or any term of the agreement constitutes a retaliatory action prohibited by § 502 of the Act (D.C. Official Code § 42-3505.02) and § 4303 of this title; or
 - (f) Any other violation of § 215 of the Act (D.C. Official Code § 42-3502.15) or this section.
- 4213.21 An application under this section shall be denied if:
- (a) All or part of any tenant's approval of a Final Voluntary Agreement has been induced by coercion, including duress, harassment, intimidation, fraud, deceit, or misrepresentation of material facts, of the tenant's legal

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rights or obligations, or of the housing provider's legal rights or obligations;

- (b) The Final Voluntary Agreement contradicts the purposes of the Act as stated in § 102 of the Act (D.C. Official Code § 42-3501.02); or
- (c) The Final Voluntary Agreement results in unreasonable rent adjustments for any rental unit or inequitable treatment of specific tenants or rental units or classes of tenants or rental units.

4213.22 For the purposes of § 4213.21(c), the reasonableness of any proposed rent adjustments for a rental unit in a Final Voluntary Agreement shall be determined in consideration of the following factors, as may be relevant:

- (a) The cost, scope, and nature of any alterations in the provision or levels of related services or facilities in proportion to the amount of the rent adjustments and to the rents for comparable rental units;
- (b) Provisions, if any, for capital improvements, the performance of deferred, ordinary maintenance or repairs, and the status or establishment of any replacement reserve fund maintained by the housing provider;
- (c) Other costs stated in the Final Voluntary Agreement;
- (d) The housing provider's rate of return on the housing accommodation, as defined in § 4209.8;
- (e) Current rents for comparable rental units in housing accommodations physically proximate to the subject housing accommodation;
- (f) The impact of any provisions on the tenants in terms of any inconvenience due to construction or relocation;
- (g) The proposed financial costs to tenants, including whether tenants have or will have a rent burden greater than thirty percent (30%) of their monthly household incomes;
- (h) Other terms and conditions agreed to by the housing provider and tenants, as required to be filed under § 4213.3(d); and
- (i) The justification for any proposed disparities between tenants or classes of tenants or rental units in the percentage by which the rents will be adjusted.

4213.23 For the purposes of § 4213.22(i), reduced rent adjustments for rental units occupied by elderly tenants and tenants with disabilities, whether or not the

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tenants qualify for an exemption pursuant to § 224(i) of the Act (D.C. Official Code § 42-3502.24(i)) and § 4215.2 of this chapter or have previously filed an application to register for protected status under § 4215, shall not be deemed inequitable or unjustified disparities in rent adjustments.

- 4213.24 If no exceptions and objections to a Final Voluntary Agreement are filed within thirty (30) days in accordance with § 4213.19, the Rent Administrator, within five (5) business days of the expiration of that time, shall issue a final order approving the application and serve the final order upon the housing provider and each affected tenant in the housing accommodation.
- 4213.25 If exceptions and objections to a Final Voluntary Agreement are filed within thirty (30) days in accordance with § 4213.19, the Rent Administrator, within fifteen (15) days of the expiration of that time, shall transfer the record of the voluntary agreement application to the Office of Administrative Hearings for a hearing and decision on each issue raised in the exceptions and objections.
- 4213.26 A hearing before the Office of Administrative Hearings on a contested voluntary agreement application, shall be conducted in accordance with 1 DCMR Chapter 28 and 1 DCMR §§ 2920-2941, and the initiating party shall have the burden of proving its entitlement to approval of the application with regard to each contested issue.
- 4213.27 No voluntary agreement shall be deemed approved or disapproved at any time prior to the issuance of a final order by the Rent Administrator or, if a hearing on the application is held, by the Office of Administrative Hearings.
- 4213.28 If a voluntary agreement is approved by the Rent Administrator or the Office of Administrative Hearings, the final order approving the application shall be binding on the housing provider and all rental units in the housing accommodation and shall state:
- (a) The new rent charged for each rental unit;
 - (b) Any changes to provision or levels of related services or facilities;
 - (c) Any provisions for capital improvements;
 - (d) Any provisions for the performance of deferred maintenance and repairs;
 - (e) Any other conditions by which the parties are bound; and
 - (f) The rights of the parties to appeal the final order.
- 4213.29 A final order of the Rent Administrator or the Office of Administrative Hearings approving or denying an application under this section may, within ten (10)

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business days of its issuance, be appealed to the Commission in accordance with § 3802 by any party to the case that is aggrieved by the final order. In accordance with § 3805, a housing provider shall not implement a rent adjustment authorized by a final order while an appeal of that order is pending before the Commission.

- 4213.30 A rent adjustment authorized by a final order approving an application under this section shall be implemented 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; provided, that any changes in related services or facilities shall be implemented prior to the rent increase and the rent increase shall not be deemed first-authorized until all changes are implemented, and that if the work to make any capital improvement renders the unit uninhabitable beyond the expiration of time, the rent surcharge may be implemented when the unit is reoccupied. Failure to implement the adjustment within twelve (12) months will result in forfeiture of the authorization in accordance with § 4204.9(e).
- 4213.31 If a Final Voluntary Agreement contains any terms to alter the provision or levels of related services or facilities at a housing accommodation, within thirty (30) days following the date an order approving the voluntary agreement application becomes final, the housing provider shall file an amendment to the Registration/Claim of Exemption Form in accordance with § 4103.1(c).
- 4213.32 A tenant of an affected rental unit who receives notice of an application filed under this section and who fails to contest the application shall not at a later date contest or challenge, by tenant petition under § 4214, an order of the Rent Administrator or the Office of Administrative Hearings approving the voluntary agreement, except as provided in § 4214.6; provided, that the tenant may challenge the implementation of a rent adjustment under § 4214.4.
- 4213.33 If a housing provider fails to comply with any term of an approved voluntary agreement, a tenant or tenant association may file a tenant petition challenging the rent adjustment implemented or provision or levels of related service or facility pursuant to the voluntary agreement, in accordance with § 4214.6(f).

SOURCE: Notice of Final Rulemaking published at 33 DCR 1336, 1406 (March 7, 1986); as amended by Notice of Final Rulemaking published at 33 DCR 2656, 2669 (May 2, 1986); as amended by Final Rulemaking published at 68 DCR 012634 (December 3, 2021).