



City of Oakland Rent Adjustment Program

OWNERS' GUIDE TO THE RENT ADJUSTMENT PROGRAM Including Newest Changes to the Rent Adjustment Ordinance

INTRODUCTION

The City of Oakland's Rent Adjustment Ordinance ("Ordinance") and the Rent Adjustment Program Regulations ("Regulations") regulate rent increases for most Oakland residential rental units built before 1983 (Chapter 8.22 of the Oakland Municipal Code). The Rent Adjustment Program ("RAP") was established to administer these laws, primarily by conducting a petition and hearing process to resolve issues between residential renters and rental property owners under the jurisdiction of RAP. The RAP establishes the annual allowable rate for standard rent increases and provides justifications for increases higher than the annual amount. The RAP laws describe the exemptions from Rent Adjustment and set forth the procedures for owners to claim exempt status. Tenants can file petitions with the RAP regarding rent increases, decreased housing services and exemptions. A Property Owner **must** file an Owner Petition for a hearing to approve most rent increases that would be above the standard amount; or to request RAP's confirmation of a property's exempt status.

The party filing a petition is called the Petitioner. The other party is called the Respondent. In either case, whether a Tenant Petition or an Owner Petition, normally a hearing is scheduled with both parties and a staff Hearing Officer. The Hearing Officer considers the evidence and the sworn testimony of the parties, and writes a decision based upon RAP law. In place of a formal hearing, the parties can agree to have mediation. With mediation, the Hearing Officer's role is to help the parties reach a mutual settlement agreement. **NOTE: Claims of exemption from Rent Adjustment can only be decided by a hearing, not in a mediation.**

No Charges to Participate in RAP Proceedings. Parties can submit completed forms by mail or in person. There is no fee or charge to either party for filing a petition or responding to one, having a RAP staff member mediate a case, or for participating in a RAP hearing.

When a tenant or owner files a petition with the Rent Adjustment Program, the RAP office mails a copy of that petition to the other party, along with a Response form for the other party to use to provide an answer to the Petitioner's claims. **NOTE: Failure of the Respondent to file a complete and timely Response may result in the Respondent not being able to participate in the Rent Adjustment hearing.**

BASIC RULES FOR PROPERTY OWNERS

REQUIREMENTS FOR UNITS COVERED BY RENT ADJUSTMENT

Owners of residential rental housing units covered by the Rent Adjustment Ordinance must comply with the following requirements. Failure to do so may be grounds for a tenant to file a Tenant Petition against the owner and may limit an owner's participation in a Rent Adjustment hearing.

Rent Adjustment Program Service Fee and Business License.

- **Rent Adjustment Program Service Fee.** Owners of units covered by the Rent Adjustment Ordinance or by the Just Cause for Eviction Ordinance ("Measure EE") are required by law to pay an annual Rent Adjustment Program Service Fee ("RAP fee"). The fee is currently \$68 per covered unit per year. Owners who pay the RAP fee on time (payable before March 1 each year) are generally allowed to pass through half the amount of this fee (\$34) to tenants. (**NOTE:** Tenants in subsidized units are not required to pay the tenant portion of the fee.) The fee cannot be added to the base rent when calculating a rent increase. Payment of the RAP fee is required for units covered either by the Rent Adjustment Ordinance or by the Just Cause for Eviction Ordinance.
- **Business License.** A residential rental property owner must have a current Oakland Business License for the rental properties.
- **Where to Pay.** For information on paying the Business License tax and the RAP fee, contact the City of Oakland Business Tax Division at (510) 238-3704 or (510) 238-3709, or go the Business Tax office at 250 Frank H. Ogawa Plaza, Ste.1320 for inquiries or to pay in person.

Noticing Requirements to Tenants of Residential Rent Adjustment Program.

The Rent Adjustment Ordinance requires that an owner provide a written notice of the existence of the Rent Adjustment Program to tenants at the start of the tenancy. The owner must use the City of Oakland form called Notice to Tenants of Residential Rent Adjustment Program, also known as the "RAP Notice" or "Notice to Tenants." This form explains tenants' rights under the rent law. The Ordinance also requires that the owner serve (give) another "Notice to Tenants" to the tenant with every notice of rent increase or other change in terms of tenancy.

NEW: Noticing Requirements at the Commencement of Tenancy. Effective September 20, 2016, at the beginning of a tenancy, the Notice to Tenants of the Residential Rent Adjustment Program (RAP Notice) must be provided to all tenants in English, Spanish and Chinese. (This is not required with the RAP Notice served concurrently with rent increases; that notice must be given in the language in which the owner negotiated the terms of the rental agreement.) O.M.C. Section 8.22.060 (A) (2). Forms in the required languages are available on the Rent Program's website or at the Program office.

- Failure of the current or previous owner to provide this notice at the beginning of a tenancy can delay the effective date of a rent increase.
- Failure to provide tenants with this notice can extend the time for tenants to file petitions challenging rent increases with the Rent Adjustment Program.
- If challenged with the Rent Adjustment Program, a notice of rent increase that is given without the Notice to Tenants may be ruled invalid in a Rent Adjustment hearing.

OWNER PETITIONS

The Rent Adjustment Program **requires** owners to seek RAP **pre-approval** through the RAP petition and hearing process for rent increases other than the CPI or that are based only on prior years' deferred CPI increases: "Banking." The RAP program also provides a petition process for an owner to request a RAP hearing to confirm that a property meets the criteria for permanent exempt status from the Rent Adjustment Ordinance.

When an owner files a petition with the RAP, a case is opened, a hearing is scheduled and a Tenant Response form is sent to the tenant parties. An owner can request the owner petition forms from the Rent Adjustment Program office by calling (510) 238-3721, or download them from the website under "Property Owner Petition Forms." Forms also are available at the RAP drop-in location in the Oakland Housing Assistance Center, 250 Frank H. Ogawa Plaza, 6th Floor, Suite 6301, during drop-in hours.

- **Property Owner Petition for Approval of Rent Increase.** The Property Owner Petition for Approval of Rent Increase is the required first step to get approval for any rent increase other than an increase based on the CPI or on Banking. The Property Owner Petition is attached in this packet and is available at the RAP website or can be picked up or requested from RAP staff.
- **Landlord Petition for Exemption.** Since 2007, owners can petition to obtain a Certificate of Exemption from the Rent Adjustment Ordinance for their exempt property. Certificates of Exemption are given only for rental units confirmed through the RAP hearing process to have permanent (rather than temporary) exempt status. However, owners are not required to petition for a Certificate of Exemption to give rent increases based **on their understanding of the exemption rules under the Ordinance.**

When Filing an Owner Petition or an Owner Response to a Tenant Petition.

The Rent Adjustment Ordinance requires that an owner **provide evidence** of the following as part of filing an Owner Petition or an Owner Response to a tenant petition:

- **Proof of Payment Required.** When filing a Property Owner Petition for Approval of Rent Increase or the Property Owner Response to a Tenant Petition, the owner must **attach evidence of:** 1) timely payment of the Rent Adjustment Program Service Fee ("RAP fee") and 2) payment for a current City of Oakland business license. Evidence can include

photocopies of the RAP fee form showing paid, of the current Business License, or of cancelled checks indicating the payments.

- **Proof of Serving the Notice to Tenants of Residential Rent Adjustment Program.** Keep a copy of your proof of service of each RAP Notice you give your tenants.
- **Official Rent Adjustment Program forms.** A response or petition must be on a form provided by the RAP; all sections must be completed and questions responded to, or else noted “N/A”; and must include documentation supporting the owner’s justifications(s) or claims. Failure to comply with these requirements could prevent the owner’s response or petition from being considered in a Rent Adjustment proceeding.
- **Timely Filing.** It is important not to miss deadlines for filing Property Owner Response forms and other documents that require timely filing. Look for the *must be received by* language on the form. Note that a postmark is not accepted as evidence of timely filing.

COVERED UNITS AND EXEMPTIONS

The Rent Adjustment Ordinance applies to all real property used for residential rental housing except those units exempted by the Ordinance or by some other law. Units covered by the Ordinance (“covered units”) include: units built before 1983, including most apartments and lofts, and in certain cases, condominiums and houses. Exempt units include those units built after 1983 (“new construction”); most single family residences and condominiums that can be sold separately; and properties that are confirmed to have been “substantially rehabilitated” through the RAP petition and hearing process. (**NOTE:** Laws on the Substantial Rehabilitation exemption are changing. Please consult with RAP staff for the latest rules.) For a full description of exemptions and requirements, see **Ordinance Section 8.22.030 Exemptions and Regulations Section 8.22.030 EXEMPTIONS**. If a property is exempt from jurisdiction of the Rent Adjustment Ordinance, none of the rules regarding Rent Adjustment applies, but the rules regarding eviction controls may still apply. The exemptions from eviction controls are different, and are found in the Just Cause for Eviction Ordinance (O.M.C. Section 8.22.350).

Certificates of Exemption to Rent Adjustment.

- A Certificate of Exemption is a determination by the Rent Adjustment Program that a dwelling unit or units qualify for exempt status and, therefore, are not covered units.
- A Certificate of Exemption may be granted **only for dwelling units that are permanently exempt from the Rent Adjustment Ordinance** as new construction, substantial rehabilitation, or by state law (Costa Hawkins), generally single family residences and condominiums.
- **Exempt status** of a unit cannot be decided on a summary basis, but **must be determined by a Rent Adjustment hearing**. The hearing could be based on a:

- **Landlord Petition for Certificate of Exemption**, in which the owner petitions the RAP for a finding of **permanent exemption** and provides evidence proving the basis of the claim; or a
- **Tenant Petition** where the **Owner Response** claims and provides proof of exempt status. An exemption claimed in response to a tenant petition can be a temporary, or conditional, exemption, such as an owner-occupied property of three or fewer units. Such an exemption could exempt a unit from Rent Adjustment as long as the owner met the requirements, but it would not result in a Certificate of Exemption. An Owner Response also can claim exempt status based on a permanent exemption. If the owner’s claim is upheld such claim would result in a Certificate of Exemption.

“Conditional” Exemptions.

Some types of exemption are “conditional” because they are not considered permanent. Certificates of Exemption **are not** given for conditional exemptions. Here is an example:

- **Exemptions for Owner-Occupied Properties of Three or Fewer Units.** Units in owner-occupied properties divided into three or fewer units will be exempt under the following conditions:
 - **Two-Year Minimum Owner Occupancy.** A qualifying owner of record must first occupy one of the units continuously as his or her principal residence for at least two years. This requirement does not apply to any property in which the owner resides in the premises on or before August 1, 2016.
 - **Continuation of Exemption.** The owner-occupancy exemption continues until a qualifying owner of record no longer continuously occupies the property.

INCREASING THE RENT

BASIC REQUIREMENTS

- **Allowable Annual Increase (CPI).** The annual rate of rent increase allowed by the Rent Adjustment Ordinance (“Annual Allowable Rent Adjustment”) is tied to the Consumer Price Index (“CPI”), and takes effect at the start of each fiscal year: **July 1**, and remains in effect for increases given **through June 30 of the following calendar year**. The CPI rate is published each April on the Rent Adjustment Program website: <http://rapwp.oaklandnet.com/>. A list of current and past years’ CPI rates is attached.
- **One Increase each Year.** Tenants can be given only one increase in any 12-month period, and the rent increase cannot take effect earlier than the tenant’s anniversary date (i.e., at least one year from the tenant’s move-in date or from the last prior rent increase). Several small increases in a year are not permitted. If it has been longer than 12 months since a tenant’s last increase the owner does not need to wait until the next anniversary date to give an increase, with proper noticing.
- **California Civil Code.** In addition to the City of Oakland noticing requirements discussed above, notices of rent increase must comply with the time limits and form requirements

found in California Civil Code Section 827. California law requires that tenants receive a 30-day advance written notice of a rent increase of 10% or less. If an increase is greater than 10%, California law requires a 60-day notice. **NOTE:** Oakland rent law prohibits rent increases higher than 10%.

- **No Increases Greater Than 10%.** Effective August 1, 2014, the Oakland City Council approved amendments to the Rent Adjustment Ordinance and RAP Regulations regarding rent increases greater than the allowable annual CPI. Rent increases given after that date cannot total more than 10% (unless the CPI were to be higher than 10%) or result in an overall increase that exceeds 30% over a 5-year period. **NOTE:** The 10% limit does not allow an owner to take a 10% increase without the justifications set forth in the rent law.
- **Increasing the Rent Above the CPI.** The RAP Ordinance and Regulations provide grounds, called “justifications,” for raising the rent above the CPI rate, as long as that increase does not exceed 10% and the Owner follows RAP guidelines and procedures.

NOTE: Laws passed in 2016 require a Property Owner to file a petition with Rent Adjustment for a hearing to obtain pre-approval of any justification for rent increases other than the CPI or Banking (deferred CPI increases). See box below.

NEW: Property Owner Petition Required for Certain Rent Increases. Effective February 1, 2017, property owners must petition the Rent Adjustment Program (RAP) for any rent increase not based on the Consumer Price Index (CPI) Rent Adjustment or Banking. (O.M.C. Section 8.22.065 (A).) This means that a property owner seeking to increase rents for capital improvements must first file a Property Owner Petition for Approval of Rent Increase and receive a hearing decision on the petition before serving a notice of rent increase based on the capital improvements. Any rent increase that is not based on CPI or Banking that is not first approved by the Rent Adjustment Program is void and unenforceable. The requirement for Owners to file petitions for rent increases was also approved by voters on November 8, 2016 (Measure JJ).

JUSTIFICATIONS FOR INCREASES GREATER THAN THE ANNUAL CPI RATE

The following discussion of justifications is only a summary. For details, please consult the Rent Adjustment Ordinance (O.M.C. Chapter 8.22) and the **Rent Adjustment Program Regulations – Appendix A.** (See RAP website under About/Laws/Rent Adjustment Ordinance/Current Ordinances and Regulations.)

- **Banking (Deferred Annual Increases).** "Banking" means deferred annual rent increases (CPI increases) that were not imposed or were not imposed in full by the current or any previous owner. An owner may defer or "bank" past years' annual CPI increases as far back as 10 years. However, there is a cap on Banking increases of no more than 3x (“three times”) the current year’s CPI in any one year’s increase. Any unclaimed allowable Banking may be given in following years’ increases, as long as that amount does not exceed the cap of 3x that current year’s CPI. Each annual CPI expires after 10 years. **NOTE:** Although a petition to obtain pre-approval is not required for an increase based on Banking, if the owner wishes to

give an increase consisting of Banking *plus* any other “justification,” the owner will have to submit the Property Owner Petition for Approval of Rent Increase, to ensure that the total combined increase did not exceed 10%. Also, if challenged by a Tenant Petition, the owner must be able to prove the rental history of the tenancy and the basis of the Banking calculation. (The Banking Calculator in Excel is available on the website. <http://rapwp.oaklandnet.com/> under Resources/Calculators.)

- **Capital Improvement Costs.** Capital Improvements are those improvements that materially add to the value of the property and appreciably prolong its useful life or adapt it to new building codes. Those improvements primarily must benefit the tenant rather than the owner. RAP Regulations establish the criteria for determining an allowed capital improvement and for calculating the capital improvement rent increase available to landlords.
 - The Regulations permit an owner to pass 70% of the cost of the improvements on to those tenants who are affected by the improvements.
 - The 70% must be divided equally between each unit that benefits from the improvement. **NOTE:** Even if a unit is occupied by the owner or owner’s agent, or is vacant, it is still counted when dividing the 70% cost among the units.
 - The capital improvement monthly increase amount per unit must be spread (amortized) over multiple years as a temporary rent increase or “pass-through,” which ends after the amortization period.
 - **Amortization Period:** For all capital improvements for which permits are first issued on or after February 1, 2017, the amortization period for capital improvements will be based on the useful life of the improvement as set forth in an amortization schedule. O.M.C. Section 8.22.020; Regulations Appendix Exhibit 1; Ordinance No. 13391 Section 4. All capital improvements with permits issued before February 1, 2017 will use the old formula (amortized over five years). The amortization period will be set to ensure that the increase is not greater than 10% of a tenant’s current rent.
 - Because capital improvement rent increases are temporary, they cannot be counted as part of the base rent when calculating subsequent years’ increases.
 - Only those capital improvements that have been completed and paid for within the 24-month period prior to the date of filing the Property Owner Petition for Approval of Rent Increase will be considered for approval in the RAP hearing.
 - The owner must provide documentation with the Petition of the work completed and the costs paid for the claimed capital improvements. These documents include copies of receipts, invoices, bid contracts, canceled checks or other documents which establish what the costs were incurred for and when they were paid.
 - The RAP Hearing Officer’s hearing decision will determine the allowed capital improvements costs, the amortization period and the amount of increase the owner can charge each affected tenant. A summary of the calculations will be attached to the hearing decision. **NOTE:** The owner must provide the summary of the hearing decision with any rent increase notice given to the tenant based on the decision.

- **Uninsured Repair Costs.** Uninsured repair costs are casualty losses that are not reimbursed to the owner. To justify a rent increase based upon uninsured repair expenses the owner must submit copies of receipts, invoices, bid contracts or other documentation showing the costs were incurred to improve the property and benefit the tenants, and evidence to show that the incurred costs were paid. See *RAP Regulations – Appendix A* for details.
- **Increased Housing Service Costs.** An increase based on comparing two years of an owner's net operating expenses. Housing Service Costs are expenses for services provided by the owner related to the use or occupancy of a rental unit. The net annual operating expenses related to the property for the most recent two annual periods are compared. The expenses considered must include property taxes; business license/taxes; insurance; P.G.&E.; water; garbage; maintenance and repairs; management costs; and other legitimate annual expenses on the property, except debt service. **You may not isolate any single expense.** All claimed expenses must be documented. The calculation for both years must provide a reasonable comparison of all the expenses. All income and all operating expenses must be included in the calculation to determine the net costs. The net costs for Year 2 must exceed the net costs for Year 1 by an amount greater than the allowable CPI increase to qualify as an Increased Housing Service Cost. **NOTE:** The Increased Housing Service Cost increase takes the place of the CPI increase for the year claimed.
- **Debt Service Costs.** Debt Service for newly-acquired units has been eliminated as a justification for new rent increases in excess of the CPI, effective April 1, 2014. However, if an owner made a bona-fide offer to purchase property before April 1, 2014, a debt service rent increase may be approved. See *RAP Regulations – Appendix A* for details.
- **Fair Return.** In order to prove that the owner is entitled to a rent increase based on constitutional fair return an owner must establish that the return on the investment is less than the return that would have been received for an investment of similar risk. At a minimum, proof of the amount of investment, evidence of the return from other investments of similar risk and an analysis of the rate of return from the rental property, including any appreciation in the value of the property, are required. See *RAP Regulations – Appendix A* for details.

Calculating Justified Rent Increases. Sample calculators and instructions for the most common justifications are included in this packet. For rent calculators in Excel format see the website: <http://rapwp.oaklandnet.com/> under Resources/Calculators.

HEARING OR MEDIATION?

You have the option of trying to resolve the tenant complaint by agreement with your tenant directly through mediation, or by having the dispute resolved by a RAP staff Hearing Officer through a hearing.

A **HEARING** is a formal, recorded proceeding. It is like a trial, but limited to issues that arise under the Rent Adjustment Ordinance, and presided over by a RAP Hearing Officer. In a hearing, the Hearing Officer will apply the rules in the Rent Adjustment Ordinance and Regulations and other laws to your situation, and will issue a written decision. At the hearing, you can present your evidence, bring witnesses and ask questions of the Tenant and his/her witnesses.

MEDIATION is a voluntary meeting between the owner and tenant facilitated by a RAP Hearing Officer or other trained mediator to discuss the problem and possible solutions. The parties have the option of choosing their own outside mediator or using an assigned mediator who is a member of the RAP staff. There is no charge for a RAP staff mediator. An outside mediator may charge a fee. That is a matter of agreement between the tenant, the owner and the mediator. To request mediation see the “Mediation Available” section at the end of the your Property Owner Petition for Approval of Rent Increase or on the Owner Response form, where you can sign to request mediation. Look at the same section on your tenant’s petition (or Tenant Response to your petition) to see if the tenant has signed the request for mediation. If your tenant has signed the request and you also sign the mediation request and file the Response form, a mediation session will be scheduled in place of the scheduled hearing. **NOTE:** Claims of exemption from Rent Adjustment can only be decided by a hearing, not a mediation.

If the mediation is successful, the case ends at that point with both parties signing a written Settlement Agreement. If you don't reach an agreement with your tenant, the case will go to hearing, with a different hearing officer, on the date set in the Notice of Mediation/Hearing mailed to you: either the same day as the mediation or on another day.

Hearings and mediations are held in person at the RAP office, 250 Frank H. Ogawa Plaza, Suite 5313, in Oakland, California. If there is good cause, parties may participate in a hearing by telephone. (Please contact the RAP office in advance if you need this option.)

HOW TO PREPARE FOR A HEARING

Naming Someone to Represent You. If you wish to appoint someone to act as your representative, before or during mediation or at the hearing, you can list them on your Response form or send the RAP a signed letter naming them as your representative. You are not required to be represented and you can un-name or change your representative at any time. If your representative appears at the hearing you are not required to be present. However, generally you as the owner may have information that will not be available to support your case if you are not present to testify at the hearing.

Request an interpreter. If you have trouble speaking or understanding English, you may bring a friend who can interpret for you. If you bring your own interpreter, that person will also be sworn in. If you need an interpreter to be provided for you, contact the Rent Adjustment Office in writing at least 10 days prior to the date of your hearing to request an interpreter. There is no charge for this service.

HERE ARE SOME TIPS ON PREPARING TO PRESENT YOUR CASE

Get Assistance. If you need legal help, you can go to one of the landlord organizations or to a lawyer or consultant. If you need an explanation of the process for hearing or mediation or the applicable law, you can call or visit the Rent Adjustment Program office.

Get Organized. Make a list of the most important points you want to make at the hearing. Organize these points in the order in which they happened.

Get Evidence. If you have witnesses, it is best if they come to the hearing. If they can't come in person, get a sworn statement. This is your witness' description of what happened, and should be sworn by adding the following language to the statement "I declare the foregoing to be true and correct under penalty of perjury under the laws of the State of California." The statement must be signed and dated by the witness. However, testimony by declaration is not as good as testimony in person and will not be enough to prove a point if it is the only evidence on that point. Make sure that you talk to your witnesses before the hearing. They need to know what questions you are going to ask them. You can ask the Hearing Officer to "take notice" of public records or facts that sensible people don't argue about, like what month it is or in what direction the sun rises in the morning. Remember that you will have an opportunity to ask each witness questions. Plan what questions you may want to have them answer.

Deadline for Submission of Documentation. You must submit any letters, receipts, photographs, and other tangible evidence to the RAP at least seven (7) days prior to the hearing. If your evidence is submitted for the first time at the hearing, the Hearing Officer may refuse to consider it, unless you have a valid excuse for not providing it on time. If you need equipment to play a video or audio tape, you must advise the RAP Office in advance. Your tenant must do the same.

Look through the Tenant's evidence. Just like you, the tenant must submit his or her written evidence to the RAP at least seven (7) days before the hearing. You can look at the evidence by making an appointment for a "file review" with a RAP staff member. (**NOTE:** You will not be able to have a file review on a drop-in basis. Be sure to call the RAP office, at 510-238-3721, sufficiently in advance of the date you want the file review.)

Practice presenting your case. Once you have gathered the facts and evidence, practice telling your side of the story. Present your case to a friend who can ask questions if some of your points are confusing. You may need to explain something in a different way to make your point clear.

Avoid asking for a rescheduling ("continuance"), unless it is really necessary. The Rent Adjustment Ordinance requires staff to grant a continuance of a hearing only for good cause and in the interests of justice. More than one continuance will not be granted to the same party unless the party shows extraordinary circumstances. Requests for a continuance must be made in writing as soon as possible after you receive the Notice of Hearing from the RAP office. Requests based on a scheduling conflict must include documentation that a prior appointment

was scheduled before you received the notice of hearing. Requests based on a medical or other emergency must have a statement from a physician or someone else familiar with your situation. Before submitting a request for continuance, the person requesting it must try to reach agreement with the other party or parties for two alternate hearing dates. An agreement by all of the parties to a continuance does not guarantee it will be granted by the RAP. The parties still need to show good cause for their request. When the parties have agreed to ask for rescheduling, the RAP must be notified in writing as early as possible and all parties, or their representatives, must sign.

If the party or parties can demonstrate good cause under the provisions of the Ordinance, a continuance can be granted.

AT THE HEARING

Bring your evidence. You should have the originals of the documents *you previously submitted*. Make sure your witnesses can get to the hearing. Make sure your papers are in the order that you want to present them so you can find them. Keep your answers short and to the point. You should only talk about things related to your case. Only testify to what you know for sure. It's okay to say that you don't understand a question. It's also okay to say that you don't know or that you've forgotten something. Just tell the truth, and don't guess at your answers.

Wait your turn. If your tenant is talking to the Hearing Officer first, you can write down any questions you may want to ask. When it's your turn, you can make your points.

Don't get angry. Even if you think your tenant is rude or lying, try to stay calm. If you don't make logical arguments, it will be very difficult for the Hearing Officer to understand what you are trying to say. Your behavior in the hearing can influence the Hearing Officer's decision. Don't interrupt, but make sure you state your case clearly and completely when it is your turn.

Don't be late! Rent Adjustment hearings are sometimes very brief. If you're late, they will start the hearing without you and may finish before you arrive.

THE HEARING DECISION

A hearing decision normally is issued and mailed to the parties within 30-45 days after the close of the hearing. If the Hearing Officer's decision is in your favor, the decision may include an order for your tenant to pay an increased rent for a certain period of time to compensate you for rent that was not paid during the time it took to hold the hearing. If the decision is in favor of the tenant, the decision may include an order reducing the rent the tenant has to pay or just invalidate an increase that hasn't gone into effect. A Hearing Officer's order is serious. If either party doesn't obey the order of the Hearing Officer, the other party can report this to the RAP, which has authority to enforce its orders by levying civil penalties.

Corrections to a Hearing Officer's Decision. If you think that there are clerical errors in the Hearing Officer's decision, you can notify the Hearing Officer in writing of the errors as long as you do so within the appeal period (see next section). For example, if you won at the

hearing but there is no mention in the decision of the correct rent, it may be a clerical error. A Hearing Officer cannot change a decision except to correct a clerical error. **Note:** You will not be able to speak to the Hearing Officer about your case, the decision, or your appeal. You must write to the Hearing Officer asking for a correction in the decision. The Hearing Officer may or may not change the decision. **Time for appeal is not extended by asking for a correction to the decision.**

Right to Appeal a Hearing Decision. Either party who is dissatisfied with the decision of the Hearing Officer may file an appeal to the Housing, Residential Rent and Relocation Board. The period to file an appeal is within twenty (20) calendar days after the date of mailing of the written decision.

APPEALING A DECISION

REASONS FOR APPEAL

The reasons allowed for appeal to the Board are listed in the RAP Regulations. You can appeal a decision issued by a Hearing Officer for the following reasons:

1. The decision does not follow the applicable law, including OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board. You have to be specific about what Ordinance section, Regulation or prior Board decision is involved.
2. The decision is inconsistent with decisions issued by other Hearing Officers. You must explain how the decision is inconsistent and identify the conflicting decisions.
3. The decision raises a new policy issue that has not been decided by the Board. You must state the issue in detail and your reasoning as to how the issue should be decided.
4. The decision is not supported by substantial evidence. You are responsible for making sure that a sufficient record (not new evidence) is before the Board to support your position.
5. You were denied a sufficient opportunity to present your claim or respond to the tenant's claims. You must explain how you were denied a sufficient opportunity. **Note:** A hearing is not required in every case. An administrative decision may be appropriate.

THE APPEAL PROCESS

Period for Filing an Appeal. Your appeal must be filed with the Rent Adjustment Program office within 20 days of the date a Hearing Decision is mailed to you. If your appeal is late, you must explain why it was late. The RAP staff will decide whether to accept a late appeal. You will receive a written confirmation of receipt of your appeal by mail.

What to File. You can request an appeal form from the Rent Adjustment Program office or download one at: <http://rapwp.oaklandnet.com/>. It is important to fill out the form completely and explain your reasons for filing the appeal. You **must** attach an explanation of the reasons for your appeal. Attachments cannot exceed 25 pages. If your appeal is incomplete, it cannot be processed.

NOTE: When filing your appeal, it is your responsibility to serve a complete copy of your appeal, including attachments, on the tenant. You must fill out the proof of service on the appeal form certifying under penalty of perjury that you served the tenant a copy, or your appeal will not be processed.

Briefs and Response Briefs. Any additional supporting argument or documentation to your appeal you want considered by the Board must be received by the Rent Adjustment Program with a proof of service on the opposing party within 15 days of filing the appeal. The number of pages in support of your appeal cannot total more than 25 pages, including the attachments already submitted with the appeal form (not counting the appeal form).

- The Board will not consider new claims. All claims, except as to jurisdiction, must have been made in the petition, response, or at the hearing.
- The Board will not consider new evidence at the appeal hearing without specific approval.
- Any response to the appeal by the other party must be received by the Rent Adjustment Program with a proof of service on opposing party within 35 days of the appellant filing the appeal.

What Happens to My Appeal? The appeal will be reviewed by the RAP staff analyst who managed your case, the Hearing Officer who wrote the decision and the RAP Program Manager. They will consider only the information contained in the appeal and the records from the original hearing. If the facts are not in dispute, the Hearing Officer may issue a corrected decision. If a corrected decision is issued, the 20-day appeal period begins again. If a corrected decision is not issued then the appeal will be scheduled for hearing at a meeting of the Rent Board.

What Rent Does the Tenant Pay While the Appeal is Pending? The Hearing Decision is automatically suspended if an appeal is filed. For example, if the original Hearing Decision orders the tenant to pay a greater or lesser amount, the increase or decrease in the rent does not go into effect until after the Board issues a final written decision from the appeal hearing. (O.M.C. 8.22.070 (D)(3)).

How am I Notified About the Appeal Hearing? You will receive a written notice of the date, time, and place of your appeal hearing by mail, approximately one month before the appeal hearing date.

Request an interpreter. If you have trouble speaking or understanding English, you may bring a friend who can interpret for you. If you bring your own interpreter, that person will also be sworn in. If you need an interpreter to be provided for you, contact the Rent Adjustment Office in writing at least 10 days prior to the date of your hearing to request an interpreter. There is no charge for this service.

THE RENT BOARD APPEAL HEARING AND DECISION

The Board usually conducts hearings at its regular meetings at 7:00 p.m. on the second and fourth Thursdays of every month. If your case is on the agenda, you do not have to sign in or Oregister. The Board chairperson will call your case in turn. If you filed the appeal and do not appear, the Board will dismiss your case.

At the Appeal Hearing, each party usually is given a total of 15 minutes to speak, divided into two segments, an opening and a rebuttal. You have the discretion to divide your time between the segments as you think best. You can have a representative speak on your behalf, if you wish. The Rent Board listens to the arguments of the parties. The case file is available to the Board at the hearing. The Board is checking the decision to make sure that it conforms to the law and that there is substantial evidence in the record to support it. After hearing the arguments, the Board deliberates publicly, votes and announces the decision at the meeting. Staff later drafts a written decision that is presented to the Board at its next meeting for its approval. If the Board does not take any action, the appealed decision by the Hearing Officer or Staff becomes the final decision of the RAP.

The Board can: (a) make a decision based on the record as presented; or (b) send back (“remand”) the case to the RAP for further hearing or re-calculation. The Board rarely hears new evidence, but if new evidence is warranted, the Board may send the case back to staff to hear the new evidence instead.

The Board's written decision is the final decision by the City. Parties cannot appeal to the City Council, but you may petition the Superior Court to review the decision within 90 days after the date the appeal decision is mailed.

-- End of Owners' Guide to the Rent Adjustment Program--