

**INFORMATION AND INSTRUCTIONS CONCERNING
SUBPOENAS AND SUBPOENAS DUCES TECUM**

A **subpoena** is an order that is issued to require the attendance of a witness to testify at a particular time and place; a **subpoena duces tecum** is an order that requires a witness to bring books, documents or other things under his or her control, that he or she is bound by law to produce into evidence. The subpoena process is available to compel the attendance of a witness who would otherwise be uncooperative. Parties to a Rent Board hearing need not be subpoenaed, as their testimony can be compelled directly by the Hearing Examiner.

How to obtain a subpoena

Subpoena to appear. Complete the Application and the Subpoena itself. You must name the person you want to testify or, if you want the testimony of an organization's representative, you must describe the subject matter of the desired testimony. (The organization must designate the person or persons most qualified to testify about that matter.)

Subpoena to produce documents. Complete the Application and the Subpoena Duces Tecum itself. Identify the person or organization who has the documents that you wish introduced into evidence, and specify what those documents are.

Both types of subpoenas. You must state why the testimony or documentation is material to the issues in your case, and why you believe the witness would be unwilling to appear at the hearing or provide the documents voluntarily.

The Hearing Examiner assigned to your case will review your application for a subpoena to determine if the witness or documents are relevant to the case. Hearings Unit staff will contact you to clarify or modify your request if it is too broad, too vague or incomplete. If your request is approved as is, the Hearing Examiner will sign the subpoena you prepared; if your request is modified, the Hearing Examiner will revise your subpoena accordingly before signing. Hearings Unit staff will telephone you to advise that your subpoena has been issued and is ready to be picked up at the Rent Stabilization Board's office.

Service of the Subpoena

The Hearings Unit provides you with the original subpoena and a copy. You are responsible for serving (delivering) the original subpoena. If you are serving a subpoena duces tecum or serving an organization, you must attach a copy of your application so the witness will know exactly what documents to deliver, or so an organization can designate the most qualified person(s) to testify. The subpoena should be served as soon as possible to allow the witness a reasonable time for preparation.

The subpoena must be served personally; it cannot be mailed, nor can it be left with someone else or slipped under a door when the person to be served is not present. The subpoena may, however, be placed in the immediate presence of the person to be served as long as the person is told that the document is a subpoena and that it is being served.

Service of the Subpoena, cont'd.

Any person may serve a subpoena. (Code of Civ. Proc. sec.1987(a).) You may, at your own expense, hire a private process server. You should provide the server with as much information as possible about the witness, including a physical description and both residence and business addresses. After service has been completed, the server must complete the Proof of Service attached to the Subpoena. You are responsible for submitting the completed Proof of Service to the Hearings Unit as soon as possible, and in no event later than the date of the hearing.

If you believe that you need to obtain an individual's personal records, for example, documents maintained by banks, employers or accountants, via subpoena, contact the Hearings Unit for information about further obligations. If you are uncertain as to whether the documents you are interested in fall into this category, contact the Hearings Unit.

Witness Fees

In most cases, a witness is entitled to a fee of \$35.00 per day, plus twenty cents per mile actually traveled to and from the hearing site. Certain persons, such as expert witnesses and city, county and state employees, are entitled to a higher fee; contact the Hearings Unit if you are uncertain whether your witness falls into this category. Be prepared to provide these fees at the time of service. If the witness demands fees upon service and they are not paid at that time, service is improper. If the witness does not ask for fees upon service, service is proper and the witness is required to attend the hearing; however, the witness is still entitled to the fees and may demand them at any time thereafter. If a witness raises the issue of unpaid fees at the hearing, the Hearing Examiner may dismiss that witness if you do not pay the fees at that time.

If you are requesting documents (a subpoena duces tecum), you must bear the expense of any fees that may be charged for producing the documents. Some businesses, e.g., lending institutions and utility companies, charge copying and research fees. If you are requesting documents from a business, it is advisable to contact the business to find out the amount of the fees and the time needed to supply the documents. You may need to request that the hearing be postponed in order to obtain documents from some businesses. If a postponement is granted, the subpoena must indicate the rescheduled time and date.

CITY OF BERKELEY
RENT STABILIZATION BOARD
2125 Milvia Street, Berkeley, California 94704
TEL: (510) 981-7368 (981-RENT) TDD: (510) 981-6903 FAX: (510) 981-4940
E-MAIL: rent@ci.berkeley.ca.us INTERNET: www.ci.berkeley.ca.us/rent/

APPLICATION FOR SUBPOENA/SUBPOENA DUCES TECUM

Petition Number: _____ Property Address: _____

Applicant (person applying for subpoena):

In this case, the Applicant is the: Petitioner Respondent. Daytime telephone: (____) _____

Scheduled hearing date/time: _____

CHECK ONE BOX:

I am applying for a Subpoena to compel the attendance of an individual.

NOTE ► A copy of this Application must accompany the following types of Subpoenas/Subpoenas Duces Tecum:

I am applying for a Subpoena to compel the attendance of an organization's representative(s), to testify about the matters described below.

I am applying for a Subpoena Duces Tecum to compel the delivery of documents.

I am applying for a Subpoena and Subpoena Duces Tecum to compel both the attendance of a witness AND the delivery of documents by that witness.

Name of the witness (individual or organization) to be subpoenaed:

What direct knowledge does this witness have to support your case? (this question does not need to be answered if you are requesting only documents) _____

What documents does this witness possess or control that support your case? (you must specify the exact item(s) to be produced) _____

How is this witness or documentation significant to the issues in this case? _____

Why do you believe this witness would be unwilling to voluntarily appear or provide documents?

DECLARATION

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Further, I understand that it is my duty to furnish any demanded witness fees and to see to it that the Subpoena is properly served.

Signature: _____ Date: _____



To be completed by the applicant for the subpoena/subpoena duces tecum:

- SUBPOENA**
- SUBPOENA DUCES TECUM**

Rent Stabilization Board

Petition No. _____ Property Address: _____

THE PEOPLE OF THE CITY OF BERKELEY, TO: _____

YOU ARE ORDERED TO APPEAR AS A WITNESS and/or PRODUCE DOCUMENTS in this action as follows, unless you make a special agreement with the applicant for this subpoena/subpoena duces tecum.

Date: _____ Time: _____ Address: 2125 Milvia Street, Berkeley, CA

YOU ARE:

- Ordered to appear in person.
- Not required to appear in person if you produce the records described in the accompanying application in compliance with Evidence Code sections 1560 and 1561.
- Ordered to appear in person and to produce the records described in the accompanying application. The personal attendance of the custodian or other qualified witness and the production of the original records are required by this subpoena. The procedure authorized by Evidence Code sections 1560(b), 1561 and 1562 will not be deemed sufficient compliance with this subpoena.
- Ordered, as an organization, to designate the most qualified person or persons to appear and testify on the organization's behalf about the matters described in the accompanying application. (Code of Civ. Proc. sec. 2020.310(e).)

IF YOU HAVE ANY QUESTIONS ABOUT WITNESS FEES OR THE TIME OR DATE FOR YOU TO APPEAR, CONTACT THE APPLICANT BEFORE THE DATE LISTED ABOVE. You are entitled to receive witness fees and mileage actually traveled both ways, as provided by law.

Applicant: _____ Telephone: (____) _____

(for Hearing Examiner use only:)

Signature, Hearing Examiner

Date

PROOF OF SERVICE OF SUBPOENA/SUBPOENA DUCES TECUM

I served the (check one or both) Subpoena Subpoena Duces Tecum AND supporting application by personally delivering a copy to the person served as follows:

Name of person served

Address where served

Date of delivery

Time of delivery

Witness fees:

were offered or demanded and paid. Amount: \$_____.

were not demanded or paid.

I received this subpoena for service on: _____ (date).

I am (check one):

not a registered California process server.

a registered California process server.

an employee or independent contractor of a registered California process server.

exempt from registration under Bus. & Prof. Code sec. ___ 22350(b) or ___ 22451.

a California sheriff or marshal.

Name _____ Street Address _____

City _____ State _____ Zip Code _____ Telephone _____

County of Registration & Registration Number (if applicable) _____

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signature: _____ Date: _____

(For California sheriff or marshal use only:)

I certify that the foregoing is true and correct.

Signature: _____ Date: _____