



**Rent Stabilization Board**

## RENT STABILIZATION BOARD

DATE: June 21, 2004

TO: Honorable Members of the Rent Stabilization Board

FROM: IRA/AGA Committee

SUBJECT: Proposed Amendment to Regulation 1004, Provision of Certificate of Permissible Rent Level

### **Recommendation:**

That the Board adopt on second reading a proposal to amend Regulation 1004, Provision of Certificate of Permissible Rent Level, to provide that where a petition for an Individual Rent Adjustment is pending when a Request for Certificate of Permissible Rent Level is filed, the Certificate will not be issued within five days but instead the Request shall be consolidated with the pending IRA.

### **Background and Need For Rent Stabilization Board Action:**

The Petris Act (Civil Code §1947.8) requires that, upon the request of a landlord or tenant of a rental unit, the Rent Board provide a Certificate of Permissible Rent Levels for the unit within five days of the request. The Act further provides that either party may appeal the determination of the permissible rent levels reflected in the certificate within 15 days from issuance of the certificate and the Board must make a final decision on the Certificate within 60 days following the filing of the appeal. A certification proceeding, by design and necessity, is a summary procedure that begins with the ministerial issuance of a document that simply reflects the largely unexamined information that is in the Rent Board's database concerning the subject rental unit.

To comply with the Petris Act, the Board has adopted Regulations 1004 to 1009. Due to the accelerated time lines mandated by the Act, Regulation 1007 provides that an appeal of a Certificate will be decided by a hearing examiner within 60 days and that the hearing examiner's decision is the final decision of the Board. Thus, there is no right to appeal a hearing examiner's decision on a Certificate Appeal to the full Rent Board. A party dissatisfied with the decision on a Certificate must go directly to court.

Recently, in RWN-1412/C-247, the Board heard a case in which the owner had requested and

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been issued a Certificate, which the tenants appealed, and the tenants subsequently filed an RWN petition. The Certificate appeal and the RWN petition were consolidated and a single hearing examiner decision was issued, which the tenant appealed. However, under the regulations, the Board was unable to hear and decide the appeal of the Certificate decision and the tenants were required to seek relief in the court. The Board was able, however, to hear and decide the appeal from the RWN decision. Conceivably, the Board could have issued a decision on appeal that conflicted with the hearing examiner's decision on the certification. Moreover, because there were two final decisions, the parties would have had to file two separate actions in court to obtain complete judicial review.

This case highlights a potential procedural problem where there are concurrent proceedings in progress on both a certificate and IRA affecting the same rental unit. The proceedings on the IRA necessarily result in a final and binding determination regarding the past and present rent ceilings, which is also the function of a rent certification proceeding. In addition, an IRA proceeding may also determine liability for past rent overcharges as well as habitability or space/services issues. Where both an IRA and a rent certification are pending, it makes sense to have the matters consolidated and a single decision issued that is subject to the same administrative appeal and judicial review process. Consolidation promotes administrative and judicial efficiency and prevents conflicting decisions. As illustrated in RWN-1412/C-247, however, the regulations require separate procedures.

To at least partially resolve the problem, staff recommends that where an IRA petition is pending at the time a request for certification is submitted, the certification should be consolidated with the IRA and be subject to the rules and procedures that govern IRAs, including the right to appeal to the Board. Adoption of this recommendation would prevent a party from "hijacking" the rent ceiling issues raised by the IRA petition and, by using the summary certification rules, from circumventing the procedural safeguards provided for IRA proceedings.

As a rule, state law preempts conflicting local regulations. Although the procedural requirements of Civil Code section 1947.8 appear to be stated in mandatory terms, rent certification under the Petris Act is simply intended to be "an appropriate preliminary first step to the resolution of a rent dispute" and not a process for resolving all issues relating to the rent ceilings. (*Sego v. Santa Monica Rent Control Bd.* (1997) 57 Cal.App.4th 250, 261.) Where an IRA has been filed, the preliminary first step to resolving the rent ceiling dispute has already been taken. All of the issues relevant to the rent certification will be addressed and decided in the IRA proceeding. As long as the IRA proceeding progresses reasonably expeditiously, no conceivable purpose is served by a concurrent, duplicative certification proceeding. The Petris Act expressly provides it does not diminish local agency powers and that the absence of a certification does not impair or otherwise interfere with a judicial or administrative hearing. These provisions indicate that the Legislature did not intend for certification proceedings to preempt or substitute for existing administrative remedies for resolving rent ceiling disputes. The Court of Appeal in *Sego* indicated that the certification procedure is mandatory but only where a dispute exists and no other proceeding for resolving it has been initiated. (57 Cal.App.4th at 260-261.) Thus, staff has informed the IRA

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Committee that it believes that the proposed amendment to Regulation 1004 is consistent with the intent and provisions of the Petris Act. The proposed amendment would only apply where the IRA is filed before the request for certification. Where an IRA is filed while a certification proceeding is pending, the certification procedures would continue to apply to the certification, even if the matters were consolidated. Thus, a party would not be able to “hijack” or delay a pending certification proceeding merely by filing an IRA.

**Financial Impact:**

None

**Name and Telephone Number of Contact Person:**

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1004. Provision of Certificate of Permissible Rent Level

(A) Upon the request of the landlord or the tenant, the Board shall provide the landlord and the current tenant with a certificate of current permissible rent level (maximum lawful rent ceiling) of the rental unit. **A fee in an amount necessary to cover the costs of issuing the certificate shall be charged for each request for a certificate.** The certificate shall be issued to the landlord and the tenant within five (5) business days from the date of request **unless there is a petition for individual rent adjustment for the unit pending on the date the request for certificate is filed.** ~~A fee in an amount necessary to cover the costs of issuing the certificate shall be charged for each request for a certificate.~~ **Where a petition for individual rent adjustment is pending on the date the request for certificate is filed, the request for certificate shall be consolidated with the individual rent adjustment petition pursuant to Regulation 1212 and determined pursuant to the procedures of Chapter 12.**

(B) Where the rental unit has previously been certified, either by means of an Individual Rent Adjustment (IRA) decision, or a Certificate of Permissible Rent Level, the determination of permissible rent level shall be made in accordance with Regulation 1005. In such case, the requesting party shall mail a copy of the Request for Certificate of Permissible Rent Level to the other party. The Request and the proof of service shall be filed with the Board within ten (10) days of the date of service.

(C) Where the rental unit has not been previously certified, the determination of permissible rent level shall be made in accordance with Regulation 1006. In such case, the requesting party shall personally serve a copy of the Request For Certificate of Permissible Rent Level on the other party. If the Request cannot with reasonable diligence be personally delivered, the Request may be served by leaving a copy at the person's home with a competent member of the household and thereafter mailing a copy to the person at the address. The Request and the proof of service shall be filed with the Board within ten (10) days of the date of service.

(D) The permissible rent levels stated in the certificate reflect the permanent rent ceilings for a rental unit in full compliance with the warranty of habitability and are binding and conclusive unless appealed pursuant to Regulation 1007 or redetermined pursuant to Regulation 1009. Notwithstanding the issuance and finality of a Certificate of Permissible Rent Level, the certified rent levels are subject to temporary adjustment pursuant to Regulation 1269(B).