

AGENDA ITEM REQUEST FORM

Department: Rent Program

Department Head: Nicolas Traylor

Phone: 620-6564

Meeting Date: October 16, 2019

Final Decision Date Deadline: October 16, 2019

STATEMENT OF THE ISSUE: On July 17, 2019, the Rent Board directed staff members to explore whether Regulation 842(B), which permits stays of the Hearing Examiner's decision pending appeal, conflicts with the Fair Rent, Just Cause, and Homeowner Protection Ordinance (hereinafter, "Rent Ordinance"), which states that a Hearing Examiner's decision shall not be stayed pending appeal. Richmond Municipal Code Section 11.100.070(d)(11) After researching the issue, staff members are proposing a potential conflict may exist. To remedy this potential conflict, staff members are proposing rescinding Regulation 842(B) and replacing it with Regulation 842.5. Regulation 842.5 would clarify that a Hearing Examiner's decision is effective on the date it is rendered; however the decision is not enforceable until it becomes the final decision of the Rent Board. Additionally, Regulation 842.5 would clarify when it is appropriate for Landlords to recoup rents that have accumulated during the pendency of an appeal. Finally, Regulation 842.5 would clarify that a Hearing Examiner may permit a Tenant who is owed excess rent to offset their monthly rents until the excess rent liability is satisfied, and a Landlord may not raise the rent during the period of which the excess rent is owed.

INDICATE APPROPRIATE BODY

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| <input type="checkbox"/> City Council | <input type="checkbox"/> Redevelopment Agency | <input type="checkbox"/> Housing Authority | <input type="checkbox"/> Surplus Property Authority | <input type="checkbox"/> Joint Powers Financing Authority |
| <input type="checkbox"/> Finance Standing Committee | <input type="checkbox"/> Public Safety Public Services Standing Committee | <input type="checkbox"/> Local Reuse Authority | <input checked="" type="checkbox"/> Other: <u>Rent Board</u> | |

ITEM

- Presentation/Proclamation/Commendation (3-Minute Time Limit)
- Public Hearing Regulation Other:
- Contract/Agreement Rent Board As Whole
- Grant Application/Acceptance Claims Filed Against City of Richmond
- Resolution Video/PowerPoint Presentation (contact KCRT @ 620.6759)

RECOMMENDED ACTION: RESCIND Regulation 842(B) and ADOPT Regulation 842.5 to clarify (1) when a Hearing Examiner's decision becomes effective and enforceable; (2) when a Landlord may recoup rents which accumulated during the pendency of an appeal; (3) when a Tenant may use excess rent to offset the monthly rent owed; (4) the impact that a finding of an excess rent liability has on a Landlords compliance with the Rent Ordinance; and (5) that a Tenant may not waive their rights granted under the Rent Ordinance as such a waiver would violate public policy – Rent Program (Nicolas Traylor/Charles Oshinuga 620-6564).

AGENDA ITEM NO:
G-1.



AGENDA REPORT

DATE: October 16, 2019

TO: Chair Maddock and Members of the Rent Board

FROM: Nicolas Traylor, Executive Director
Charles Oshinuga, Staff Attorney

SUBJECT: RESCISSION OF REGULATION 842(B) AND PROPOSED ADOPTION OF REGULATION 842.5 CONCERNING THE ENFORCEMENT OF FINAL RENT BOARD DECISIONS

STATEMENT OF THE ISSUE:

On July 17, 2019, the Rent Board directed staff members to explore whether Regulation 842(B), which permits stays of the Hearing Examiner's decision pending appeal, conflicts with the Fair Rent, Just Cause, and Homeowner Protection Ordinance (hereinafter, "Rent Ordinance"), which states that a Hearing Examiner's decision shall not be stayed pending appeal. *Richmond Municipal Code Section 11.100.070(d)(11)* After researching the issue, staff members are proposing a potential conflict may exist. To remedy this potential conflict, staff members are proposing rescinding Regulation 842(B) and replacing it with Regulation 842.5. Regulation 842.5 would clarify that a Hearing Examiner's decision is effective on the date it is rendered; however the decision is not enforceable until it becomes the final decision of the Rent Board. Additionally, Regulation 842.5 would clarify when it is appropriate for Landlords to recoup rents that have accumulated during the pendency of an appeal. Finally, Regulation 842.5 would clarify that a Hearing Examiner may permit a Tenant who is owed excess rent to offset their monthly rents until the excess rent liability is satisfied, and a Landlord may not raise the rent during the period of which the excess rent is owed.

RECOMMENDED ACTION:

RESCIND Regulation 842(B) and ADOPT Regulation 842.5 to clarify (1) when a Hearing Examiner's decision becomes effective and enforceable; (2) when a Landlord may recoup rents which accumulated during the pendency of an appeal; (3) when a Tenant may use excess rent to offset the monthly rent owed; (4) the impact that a finding of an excess rent liability has on a Landlords compliance with the Rent Ordinance; and (5) that a Tenant may not waive their rights granted under the Rent Ordinance as such a waiver would violate public policy – Rent Program (Nicolas Traylor/Charles Oshinuga 620-6564).

FISCAL IMPACT:

There is no fiscal impact related to this item.

DISCUSSION:

Background

At its Regular Meeting on July 17, 2019, the Rent Board directed staff members to explore whether Regulation 842(B), which permits stays of the Hearing Examiner's decision pending appeal, conflicts with the Fair Rent, Just Cause, and Homeowner Protection Ordinance (hereinafter, "Rent Ordinance"), which states that a Hearing Examiner's decision shall not be stayed pending appeal. *Richmond Municipal Code Section 11.100.070(d)(11)* After researching the issue, staff members found that current state law prohibits both a Hearing Examiner's decision and the Rent Board's decisions from being immediately enforceable. Some rent control jurisdictions have satisfied this state law requirement by adopting regulations that state a Hearing Examiner's decision shall be stayed pending appeal. Richmond Rent Board Regulation 842(B), attempts to follow suit with other jurisdictions to ensure compliance with state law; however, in its attempt to comply with state law, the requirement in Regulation 842(B) that stays a Hearing Examiner's decision appears to be at odds with the direct language of Richmond Municipal Code Section 11.100.070(d)(11), which prohibits the staying of the Hearing Examiner's decision. To remedy the potential for conflict with the Rent Ordinance and to maintain compliance with current law, staff members are proposing the rescission of Regulation 842(B) and adopting Regulation 842.5, which would clarify when the Hearing Examiner's and Rent Board decisions become effective and enforceable.

Additionally, in the course of its research, staff members found a pressing public need to clarify (1) when a Landlord is able to recoup accumulated Rents during the pendency of an appeal; (2) when a Tenant is permitted to offset Excess Rent overpayments against monthly rents; (3) the impact that a finding of an excess rent liability has on a Landlord's compliance with the Rent Ordinance; and (4) that a Tenant may not waive their rights granted under the Rent Ordinance as such a waiver would violate public policy.

Proposed Regulation 842.5 Clarification of When a Hearing Examiner's or Rent Board's Decision is Effective and Enforceable

Richmond Municipal Code Section 11.100.070(d)(11), in pertinent part, states, "the decision of the hearing examiner shall be the final decision of the Board in the event of no appeal to the Board. The decision of the hearing examiner shall not be stayed pending appeal..." At first blush, it would appear that this provision potentially conflicts with the state law prohibition on Hearing Examiner's decisions being enforceable immediately. To avoid any potential conflict with state law, on January 24, 2018, the Rent Board adopted Regulation 842(B), which states, in pertinent part, that "the hearing

ITEM G-1

examiner's decision shall be stayed pending appeal." Although alleviating any conflict the Rent Ordinance may have with existing state law, Regulation 842(B) created a potential conflict with the Rent Ordinance. Rescinding Regulation 842(B) would alleviate the potential conflict between the Regulation and the Rent Ordinance, but would reopen the potential conflict between the Rent Ordinance and state law. To address this issue, staff members re-examined the direct language of the Rent Ordinance.

As stated above, Richmond Municipal Code Section 11.100.070(d)(11), in pertinent part, states, "the decision of the hearing examiner shall be the final decision of the Board in the event of no appeal to the Board. The decision of the hearing examiner shall not be stayed pending appeal..." The prohibition on staying a Hearing Examiner's decision may seem like a requirement that the hearing examiner decision be enforceable immediately, but a closer read of the pertinent provision suggests otherwise. Although Richmond Municipal Code Section 11.100.070(d)(11), stands for the proposition that a Hearing Examiner's decision cannot be stayed during an appeal, it does not dictate when a Hearing Examiner's decision is final and enforceable.

As a matter of law, only final decisions are enforceable. Richmond Municipal Code Section 11.100.070(d)(11) explains that when the Hearing Examiner's decision is not appealed, the decision becomes the final decision of the Rent Board. As a final decision and by operation of law, it then becomes enforceable. The Rent Ordinance does not dictate when an appeal must be filed but leaves that gap to be filled by the Rent Board. On January 24, 2018, the Rent Board sought to fill that gap by adopting Regulation 842(A), which mandates that an appeal must be received by the Rent Program within 35 days from the date that the notice of the Hearing Examiner's decision is mailed to the party. If the parties fail to file an appeal within the requisite time period, the decision of the Hearing Examiner becomes the final decision of the Rent Board and by operation of law, is enforceable. This begs the question, what is the impact of the Hearing Examiner's decision during those 35 days?

As previously stated, if the decision is not final, it is not enforceable. In other words, during the 35-day appeal period, the Hearing Examiner's decision is not final and thereby, not enforceable; however, the Hearing Examiner's decision is effective from the date of the decision, meaning that the legal rights and obligations found under the Hearing Examiner's decision accrues during the pendency of finality. To illustrate this principle, consider a situation where a Tenant, on August 15, receives a favorable decision adjusting the Maximum Allowable Rent (hereinafter, "MAR") downward from \$1,000 to \$500 and is awarded excess rent in the amount of \$500. On September 1st, the Tenant will still pay the \$1,000/month rent (unless the Landlord chooses otherwise), as the Hearing Examiner's decision is not final and thus not enforceable. On September 19th, having received no appeal, the Hearing Examiner's decision becomes final and enforceable. On October 1st, the Tenant will now pay \$500 dollars in Rent, and is owed \$1000 dollars in excess rent rather than \$500 dollars due to the principle of accrual.

ITEM G-1

Accrual attaches on the date that the decision becomes effective, whereas enforceability attaches on the date that the decision becomes final.¹

In the event of an appeal, a Hearing Examiner's decision is not final and thus not enforceable. Consequently, the rights and obligations under decision continue to accrue but cannot be enforced until and unless it becomes the final decision of the Rent Board. In the event the Rent Board affirms or modifies the decision on appeal, the decision becomes the final decision of the Rent Board and is enforced from the effective date of the decision. If the decision is reversed, the decision is void and supplanted by the Rent Board's articulated decision.

To add another layer to the discussion, Richmond Municipal Code Section 11.100.090, explains that Rent Board decisions on appeal cannot be enforceable for 30 days to allow for the parties to seek a writ at the Superior Court. In other words, although the Rent Board decision on appeal is final and enforceable, its enforceability is stayed for thirty days to allow for a party to sue at the Superior Court.

Placed into context of the presented issue, the prohibition on staying a Hearing Examiner's decision contained in Richmond Municipal Code Section 11.100.070(d)(11), does not clearly conflict with existing state law, so long as the Rent Board adopts a series of Regulations clarifying that neither the Hearing Examiner's nor the Rent Board's decision are immediately enforceable; however, both decisions are effective for purposes of accrual. Rent Board Regulation 842.5 establishes the aforementioned principle to mend any potential conflict Richmond Municipal Code Section 11.100.070(d)(11), may have with state law, while simultaneously alleviating any potential conflict Regulation 842(B) may have had with Richmond Municipal Code Section 11.100.070(d)(11).

Proposed Regulation 842.5 Clarifies When it is Appropriate to Offset Owed Excess Rent Against Monthly Rent, When a Landlord May Recoup Rents that accrued During an Appeal Period, and the Impact that a Finding of Excess Rent Liability has on Landlords' Compliance with the Rent Ordinance

As stated above, during the course of their research, staff members ascertained a public need to clarify (1) when a Landlord is able to recoup accumulated Rents during the pendency of an appeal; (2) when a Tenant is permitted to offset Excess Rent overpayments against monthly rents; (3) the impact that a finding of an excess rent liability has on a Landlords compliance with the Rent Ordinance; and (4) that a Tenant may not waive their rights granted under the Rent Ordinance as such a waiver would violate public policy. Proposed Regulation 842.5 clarifies that Landlords are able to recoup the rents that accrue during the pendency of an appeal, only where the Landlord

¹ The principle of finality or enforceability and the phrase "take effect" are used synonymously and are not to be confused with the word "effective". When something "takes effect" it is enforceable, but the enforceability is measured from the effective date of the decision. For an example, please see Richmond Municipal Code Section 11.100.070(j)

ITEM G-1

is legally entitled to those Rents through a properly-noticed Rent increase, which covered the dates of the accrued Rents being sought. Tangentially, Regulation 842.5 explains that a Tenant may recoup Excess Rent by offsetting the monthly Rent owed by the Excess Rent owed, only as described in a final Rent Board decision. Additionally, where a Landlord is found to be liable for Excess Rent, the Landlord is considered to be out of compliance with the Rent Ordinance and may not take a Rent increase. Finally, Regulation 842.5 reiterates that Tenants cannot waive rights granted through the Rent Ordinance, which includes rights affirmed through final decisions of the Rent Board.

Conclusion

Staff members recommend the Rent Board rescind Regulation 842(B) and adopt Regulation 842.5.

DOCUMENTS ATTACHED:

Attachment 1 – Regulation 842 of the Rent Board Regulations (Redline Version)

Attachment 2 – Regulation 842 of the Rent Board Regulations (Clean Version)

Attachment 3 – Regulation 842.5 of the Rent Board Regulations (Clean Version)

ITEM G-1 ATTACHMENT 1

842. Appeal Process

- A. Any appeal shall be filed on a form provided by the Board no later than thirty (30) calendar days after receipt of the notice of the hearing examiner's decision. A party is presumed to receive the decision five (5) business days after it is mailed. The appeal must contain a statement of the specific grounds on which the appeal is based. The Board will not consider an appeal that fails to state any facts or arguments in support of the grounds alleged in the appeal. Except as provided in Section 842(E), no other documents in support of the appeal will be accepted after the appeal deadline unless specifically requested by the Board. The appeal shall be sent to the Board and opposing parties and their representative. Additionally, appellants shall send a copy of the appeal to the hearing examiner whose decision is being appealed. The Board or staff may order that appeals relating to the same building or property, or different properties of the same Landlord, be consolidated. The opposing party shall file any response to the appeal within fifteen (15) calendar days from the date the appeal is filed.
- B. ~~The hearing examiner's decision shall be stayed pending appeal. In its decision, the Board shall order the appropriate party to make retroactive payments over a reasonably appropriate period to restore the parties to the positions they would have occupied had the hearing examiner's decision been the same as that of the Board or had not been stayed.~~
- C. At least fourteen (14) calendar days prior to the date set for Board action on the appeal, a Board Staff report shall be prepared recommending that the decision of the hearing examiner be affirmed, modified, reversed or remanded to the hearing examiner for further hearing. Board Staff may supplement the record by including matters of which the Board may take official notice, provided that the parties are notified of such matters at least fourteen (14) days prior to the date set for Board action. Any objection to a staff request for official notice of such matters shall be filed no later than seven (7) calendar days prior to the date set for Board action.
- D. At least fourteen (14) calendar days prior to the date set for Board action, all parties shall be notified by mail of the date, time and place set for Board action on the appeal. Copies of the Board Staff recommendation shall be mailed to all parties and their representatives at least 14 days prior to the Board action. Copies of the official record and the staff recommendation shall be available for public review at the Board office at least fourteen (14) days prior to the date set for Board action. Parties may submit written comments to the Board up to seven (7) days prior to the Board action.
- E. At the Board meeting at which action on the appeal is scheduled, each party or the party's representative will be allowed seven (7) minutes to address the Board at the beginning of the hearing in the following order: appellant for five (5) minutes, respondent for seven (7) minutes, appellant for two (2) minutes. For any party addressing the Board who requires translation the allowable times shall be doubled. The Board has the discretion to allow more time.

ITEM G-1 ATTACHMENT 1

- F. Unless the Board determines that a de novo hearing is required, the Board's decision will be based exclusively on the record before the hearing examiner. Parties shall be instructed not to discuss or comment upon factual matters or evidence that were not presented to the hearing examiner or officially noticed. Parties may discuss or comment upon the legal matters in question and any other pertinent issues raised by the appeal. The Board shall disregard any discussion or comment regarding factual matters that were not in the record before the hearing examiner or officially noticed. The vote of three (3) Board members is required to affirm, modify, remand or reverse the decision of the hearing examiner.
- G. The Board's decision to affirm, modify, remand or reverse the decision of the hearing examiner shall be supported by written findings of fact and conclusions of law. When the Board votes to adopt the staff recommendation unchanged, the parties to the appeal will be notified only of the Board's decision. When the Board does not adopt the staff recommendation as written, a written decision of the Board shall be mailed to the parties or their representative of record.
- H. Continuances of dates set for Board action on appeals shall be granted by a majority of the Board or by the Executive Director only for good cause shown. A written request and the reasons for it must be received by the Board at least two (2) business days prior to the scheduled hearing, unless good cause is shown for later request. The written request must contain the reasons for the continuance, an explanation of what efforts were made to ascertain the position of the other parties regarding the request for a continuance, and mutually acceptable alternative dates. Copies of this written request must be sent immediately to all other parties and proof of service must accompany the written request filed with the Board.
- I. Reconsideration.
- 1) At the discretion of the Executive Director or their designee, an appeal may be treated as a request for reconsideration and referred back to the Hearing Examiner for such reconsideration only if it is claimed by the appellant that:
 - a) There was good cause for a failure to respond to a petition; or
 - b) There was good cause for a failure to appear at a settlement conference or hearing; or
 - c) The appellant wishes to present relevant evidence that could not, with reasonable diligence, have been discovered and produced at the hearing.
 - d) The decision resulted from a clearly inaccurate application of the law; staff members discovered a problem with the record; the underlying legal standard upon which the decision is based changed before final disposition of the case, including matters subject to a pending petition for writ of administrative mandamus; or any other reason the case should be remanded for reconsideration for administrative efficiency.
 - 2) In the event that the Executive Director or their Designee finds good cause exists to treat the appeal as a request for reconsideration, the Executive Director or their Designee shall, within 15 days from the day to file an appeal has expired, issue an Order of Reconsideration, which shall describe the basis of granting reconsideration, the scope of issues to be reconsidered by

ITEM G-1
ATTACHMENT 1

the Hearing Examiner, and modified procedures, if any, of the hearing process to expedite the matter for a hearing on reconsidered issues. The Rent Program shall send the Order of Reconsideration to all parties and, schedule a hearing consistent with the Order of Reconsideration within 60 days from the day the Order of Reconsideration was issued.

ITEM G-1 ATTACHMENT 2

842. Appeal Process

- A. Any appeal shall be filed on a form provided by the Board no later than thirty (30) calendar days after receipt of the notice of the hearing examiner's decision. A party is presumed to receive the decision five (5) business days after it is mailed. The appeal must contain a statement of the specific grounds on which the appeal is based. The Board will not consider an appeal that fails to state any facts or arguments in support of the grounds alleged in the appeal. Except as provided in Section 842(E), no other documents in support of the appeal will be accepted after the appeal deadline unless specifically requested by the Board. The appeal shall be sent to the Board and opposing parties and their representative. Additionally, appellants shall send a copy of the appeal to the hearing examiner whose decision is being appealed. The Board or staff may order that appeals relating to the same building or property, or different properties of the same Landlord, be consolidated. The opposing party shall file any response to the appeal within fifteen (15) calendar days from the date the appeal is filed.
- B. At least fourteen (14) calendar days prior to the date set for Board action on the appeal, a Board Staff report shall be prepared recommending that the decision of the hearing examiner be affirmed, modified, reversed or remanded to the hearing examiner for further hearing. Board Staff may supplement the record by including matters of which the Board may take official notice, provided that the parties are notified of such matters at least fourteen (14) days prior to the date set for Board action. Any objection to a staff request for official notice of such matters shall be filed no later than seven (7) calendar days prior to the date set for Board action.
- C. At least fourteen (14) calendar days prior to the date set for Board action, all parties shall be notified by mail of the date, time and place set for Board action on the appeal. Copies of the Board Staff recommendation shall be mailed to all parties and their representatives at least 14 days prior to the Board action. Copies of the official record and the staff recommendation shall be available for public review at the Board office at least fourteen (14) days prior to the date set for Board action. Parties may submit written comments to the Board up to seven (7) days prior to the Board action.
- D. At the Board meeting at which action on the appeal is scheduled, each party or the party's representative will be allowed seven (7) minutes to address the Board at the beginning of the hearing in the following order: appellant for five (5) minutes, respondent for seven (7) minutes, appellant for two (2) minutes. For any party addressing the Board who requires translation the allowable times shall be doubled. The Board has the discretion to allow more time.
- E. Unless the Board determines that a de novo hearing is required, the Board's decision will be based exclusively on the record before the hearing examiner. Parties shall be instructed not to discuss or comment upon factual matters or evidence that were not presented to the hearing examiner or officially noticed. Parties may discuss or comment upon the legal matters in question and any other pertinent issues raised by the appeal. The Board shall disregard any discussion or comment regarding factual matters that were not

ITEM G-1 ATTACHMENT 2

in the record before the hearing examiner or officially noticed. The vote of three (3) Board members is required to affirm, modify, remand or reverse the decision of the hearing examiner.

- F. The Board's decision to affirm, modify, remand or reverse the decision of the hearing examiner shall be supported by written findings of fact and conclusions of law. When the Board votes to adopt the staff recommendation unchanged, the parties to the appeal will be notified only of the Board's decision. When the Board does not adopt the staff recommendation as written, a written decision of the Board shall be mailed to the parties or their representative of record.
- G. Continuances of dates set for Board action on appeals shall be granted by a majority of the Board or by the Executive Director only for good cause shown. A written request and the reasons for it must be received by the Board at least two (2) business days prior to the scheduled hearing, unless good cause is shown for later request. The written request must contain the reasons for the continuance, an explanation of what efforts were made to ascertain the position of the other parties regarding the request for a continuance, and mutually acceptable alternative dates. Copies of this written request must be sent immediately to all other parties and proof of service must accompany the written request filed with the Board.

I. Reconsideration.

- 1) At the discretion of the Executive Director or their designee, an appeal may be treated as a request for reconsideration and referred back to the Hearing Examiner for such reconsideration only if it is claimed by the appellant that:
 - a) There was good cause for a failure to respond to a petition; or
 - b) There was good cause for a failure to appear at a settlement conference or hearing; or
 - c) The appellant wishes to present relevant evidence that could not, with reasonable diligence, have been discovered and produced at the hearing.
 - d) The decision resulted from a clearly inaccurate application of the law; staff members discovered a problem with the record; the underlying legal standard upon which the decision is based changed before final disposition of the case, including matters subject to a pending petition for writ of administrative mandamus; or any other reason the case should be remanded for reconsideration for administrative efficiency.
- 2) In the event that the Executive Director or their Designee finds good cause exists to treat the appeal as a request for reconsideration, the Executive Director or their Designee shall, within 15 days from the day to file an appeal has expired, issue an Order of Reconsideration, which shall describe the basis of granting reconsideration, the scope of issues to be reconsidered by the Hearing Examiner, and modified procedures, if any, of the hearing process to expedite the matter for a hearing on reconsidered issues. The Rent Program shall send the Order of Reconsideration to all parties and, schedule a hearing consistent with the Order of Reconsideration within 60 days from the day the Order of Reconsideration was issued.

ITEM G-1 ATTACHMENT 3

842.5 Enforcement of Rent Board Decision

- A. Enforcement of Final Decision of the Rent Board: Only final decisions of the Rent Board are enforceable. The final decision of the Rent Board shall be enforced from the effective date of the decision.
- B. Effective Date of Hearing Examiner's Decision: The decision of the hearing examiner shall be the final decision of the Rent Board if the parties to the petition fail to file a timely appeal to the Rent Board. An appeal shall be considered timely if filed consistent with Regulation 842(A). The hearing examiner's decision shall be effective from the date of the decision. However, a hearing examiner's decision is not enforceable unless the decision becomes the final decision of the Rent Board.
- C. Rent Board's Decision on Appeal: Rent Board decisions on appeal shall be the final decision of the Rent Board on the day the Rent Program issues the parties notice of the Rent Board decision. Although final, the Rent Board decision shall be stayed for 30 days from the date the Rent Board decision became final.
- D. Recouping Excess Rent: Upon a determination that a Landlord or Landlords are liable to a petitioner for any amount of excess Rent, the hearing examiner or Rent Board shall specify in their decision that the petitioner is entitled to offset payment of any Rent which would otherwise be due and payable following the date of the Rent Board's final decision, as a means of recouping the amount to which petitioner is entitled, until the amount of offset Rent, using the current lawful Rent as a measure, is equal to the amount of liability imposed by the decision. Recoupment by the Tenant and compliance with the decision of the final decision of the Rent Board shall be presumed to occur in the normal course of events. A Landlord may discharge the liability imposed by the final decision of the Rent Board by not objecting to recoupment for the necessary period of time or paying to the petitioner the entire amount or remaining amount.
- E. Landlord recoupment of Rent Increases During Pendency of Appeal: Consistent with Civil Code Section 827, a Landlord is not entitled to a Rent increase unless properly noticed. To be entitled to a Rent Board's final decision of a grant of an individual upward adjustment in the Maximum Allowable Rent, a Landlord must first serve a valid Rent increase notice consistent with Civil Code Section 827. Where a hearing examiner grants an individual upward adjustment in the Maximum Allowable Rent and the decision is appealed, in the event that the Rent Board affirms the amount of an individual upward adjustment in the Maximum Allowable Rent, a Landlord may recoup Rents that accumulated during the pendency of an appeal only if the Landlord served a proper notice of Rent increase consistent with Civil Code Section 827 and the Rent increase notice's effective date covered the period in which the Rent is sought to be recouped.

ITEM G-1 ATTACHMENT 3

- F. Rent Increases During Excess Rent Recoupment Period: A Landlord found liable under a Rent Board's final decision shall not be deemed in compliance with the Richmond Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance with respect to the subject unit until the entire amount of liability is discharged. Until that time, the Landlord, including any successor in interest shall be prohibited from implementing any increases in the Rent which could otherwise be implemented as to the subject unit.

- G. Waiver of Rights and/or Obligation Granted Pursuant to a Rent Board Decision: Any post-decision agreement between the petitioner and the Landlord reducing the amount of liability already decided may be deemed void as contrary to public policy and shall not prevent the Rent Board from enforcing the decision as to the entire amount.