



Rent Stabilization Board
Legal Department

MEMORANDUM

DATE: January 20, 2022

TO: Honorable Members of the Berkeley Rent Stabilization Board

FROM: Honorable Members of the IRA/AGA/Registration Committee
By: Matt Brown, General Counsel (MS)

SUBJECT: Proposed Amendments to Regulation 801 [Proper Filing of Rent Registration Statement] and Regulation 1311 [Alleging Compliance in Complaint] – Second Reading

Recommendation:

That the Board adopt amendments to Regulation 801 clarifying the definition of “rent registration statement” for units required to be registered pursuant to recently enacted Measure MM and to Regulation 1311 clarifying that units which are now required to be registered as a result of recently enacted Measure MM, are not in substantial compliance until they have filed all registration statements as articulated in the proposed amendment to Regulation 801(D).

These amendments make clear that the obligation to file all required and approved Board forms for purposes of registration are identical for fully covered units and those units requiring registration under Measure MM and that a landlord’s failure to comply with these registration requirements shall be an affirmative defense to any action for possession of any fully or partially covered rental unit. The full Board reviewed this report on First Reading at its December 16, 2021 meeting and unanimously recommended that the Board adopt these amendments.

Background and Need for Rent Stabilization Board Action:

Board Commissioners have long expressed interest in expanding the scope of services to as many residential rental units as the Rent Ordinance allows. In the past, Board staff have not been able to provide services to many units, because the Board did not collect any registration fees from landlords of those properties. In furtherance of that goal, the Board asked the Council to place a ballot measure on the November 3, 2020 general ballot that would require registration of certain partially covered units; namely rented single family homes, condominiums, and units that qualify as new construction. The mayor’s July 30, 2020 report to Council provided the following rationale for placing the matter on the ballot:

“The Rent Ordinance currently exempts single-family homes, condominiums, and newly constructed rental units from Registration. When owners and tenants of these rental units seek information from the Rent Board, staff is unable to provide them with substantive assistance since the agency is funded by Registration fees and thus only provides assistance to those that are fully covered by the Rent Ordinance.

If a secondary registration fee is adopted for rental units in single-family homes, condominiums, and new construction, Rent Board staff would be able to assist tenants and landlords of these units. In addition, aggregated information about these types of units would allow policymakers to monitor the ongoing housing crisis and improve the efficacy of local regulatory efforts to mitigate the crisis. The Registration Fee for these units would cover only those additional expenses incurred by the Board as a result of counseling the owners and tenants of these partially-exempt units, as well as registration of those units, and would not cover the costs associated with petitions for individual rent adjustments and other services that are not provided to partially-exempt units.”

On November 3, 2020, the voters adopted Measure MM, amending the Ordinance, in part, “authorizing” the Rent Board to collect information from rented single-family homes, rented condominiums and newly constructed units (B.M.C. 13.76.050I, O; B.M.C. 13.76.080L). The measure also allowed the Board to charge a registration fee for these previously partially exempt units (B.M.C. 13.76.060N).¹

In administering Measure MM, the agency now requires landlords of Measure MM properties to pay a reduced registration fee, file an initial “Registration Statement for Partially Covered Units” and annual “Tenancy Registration Forms for Partially Covered Units” (both forms are attached hereto).

Historically, a landlord’s property has been deemed properly registered when all required registration forms have been completed and filed with the agency for all units and all required registration fees and/or penalties have been paid (Board Regulation 801A). In an action to recover possession of a rental unit covered by the Ordinance an owner must allege compliance with the implied warranty of habitability, Section 10 of the Ordinance (Rent Ceiling) and Section 8 of the Ordinance (Rent Registration) for *each unit on the property*. (See BMC section 13.76.130C.) Failure to comply with these requirements is a defense to any such action for possession (See BMC section 13.76.130C. and Regulation 1311).

Board staff have initiated registration efforts to these newly partially covered units. Many landlords have paid registration fees, but there remains a substantial number of landlords that have failed to provide the Board with any information regarding the tenancies in their units. Without this information the Board is unable to provide the “aggregated information about these types of units [that] would allow policymakers to monitor the ongoing housing crisis and improve the efficacy of local regulatory efforts to mitigate the crisis” as the mayor’s report indicated was a fundamental reason the Council supported this item. Since the passage of Measure MM, several Commissioners and Councilmembers alike have made clear that they are relying on information that is collected from these units to recommend further policy associated with rental housing.

¹ The Board has since referred to these units as “partially covered” rather than “partially exempt” in order to eliminate any confusion regarding their registration status.

Measure MM mandates registration requirements for certain types of previously exempt units. It would be helpful to amend Regulation 801 and 1311 to make clear that these units will not be in compliance with Section 8 of the Ordinance until certain specific registration forms are fully completed and filed and that the failure to comply with these registration requirements will remain a defense to an unlawful detainer action for possession as articulated in the Ordinance.

Rationale for Amendments:

These amendments bring into conformity the registration requirements for these two categories of units and expressly make clear that failure to properly register these units will be an affirmative defense to an eviction. To further conform the registration requirements of these categories of units, Regulation 801(G) will remain unchanged. This section of Regulation 801 tracks the “substantial compliance” requirement as laid out in California Civil Code section 1947.7 (the “Petris Act”) which allows a landlord to be in substantial compliance with registration requirements when the owner has made a good faith effort to comply with the Ordinance and has cured any defect in a timely manner after receiving notice from the Board of such defect (Regulation 801(G)(1)(2)).

By amending Regulation 801 and 1311 the Board will create a certain degree of uniformity in registration requirements and make clear that the failure to comply with these requirements is a defense for both fully covered units and those partially covered units under Measure MM.² Clarifying that landlords who fail to file current registration information will not be able to evict tenants of any unit on the property will provide further incentive to file all pertinent registration information, so that there are fewer barriers to staff assisting community members who contact the agency for services and provide more valuable information for policymakers when contemplating future rental housing legislation.

Proposed Regulation 801 and 1311 are attached hereto. Additions are underlined. Deletions are marked with strikethrough.

Name and Telephone Number of Contact Person:

Matt Brown, General Counsel (510) 981-4930
Rent Stabilization Board

Attachments:

1. Proposed Amendments to Regulation 801
2. Proposed Amendments to Regulation 1311
3. Registration Statement for Partially Covered Units
4. Tenancy Registration Form for Partially Covered Units

² Fully covered units must also file Vacancy Registration Forms for each new tenancy complete with tenant information. Measure MM units need only file Tenancy Forms once a year.

801. Proper Filing of the Rent Registration Statement

(A) A rental unit is properly registered in accordance with Section 8 of the Rent Stabilization Ordinance if the landlord or landlord's representative has:

(1) Filed with the Board completed registration statements, on forms provided by the Board, including all of the information required for the individual units and the information concerning all the covered units in the same property;

(2) Paid to the City of Berkeley all required registration fees and penalties due for the unit and all the covered units in the same property; and

(3) Fully completed registration for all covered units on the same property parcel.

(B) A landlord who asserts that he or she is unable to supply required information may request review of his or her registration status by the Rent Stabilization Board Executive Director or the Executive Director's designee. The Executive Director or designee shall determine whether good cause exists to find the landlord properly registered notwithstanding the lack of required information. The request for review shall be made on a form approved by the Executive Director and shall include, without limitation, a declaration under penalty of perjury fully describing the landlord's efforts to obtain the missing information. The Executive Director may specify the nature and extent of the efforts, and documentation thereof which is required. The landlord shall serve a copy of the request for review on all current tenants in the property and known prior tenants who resided in the premises during the time period for which the information is missing. A proof of service by mail on said tenants shall accompany the request for review. The tenants may submit in writing to the landlord any relevant information concerning the request for review within ten (10) days of the date of service of the request upon them. A copy of this information submitted to the landlord shall be filed with the Board. It shall be accompanied by a proof of service by mail upon the landlord. The Executive Director or designee shall determine whether or not the inability to provide the required information resulted from circumstances beyond the control of the landlord. If it is determined that the landlord was not at fault and that the missing information cannot now be produced nor reasonably reconstructed from any available information, the landlord may be found to be properly registered notwithstanding the lack of information. If the reason for the unavailability was within the control of the landlord, no relief shall be granted unless the landlord demonstrates that he or she has otherwise substantively complied with the Ordinance and that the landlord has made all reasonable efforts to obtain or reconstruct the information which is unavailable. A copy of the determination shall be mailed to the landlord and to the tenants of the affected property. The Board may establish an appropriate fee for the filing of a request for review of registration status. No rent withholding petition for non-registration shall be acted upon while a request for review is pending.

(C) In designating a rental unit as properly registered, the Board's intent is to facilitate the rent registration and individual adjustment of rent ceiling processes and the dissemination of information regarding the registration of rental units. Such designation shall not be construed as the Board's certification of the lawful base rent, current lawful rent ceiling or any other information provided on the rent registration statement. Nothing in this Regulation shall preclude the Board nor any person from challenging the accuracy of any information provided in any registration statement or declaration in the context of any proceeding or action.

(D) As used in this Regulation, "rent registration statement" shall include the initial registration statement, any required annual registration statement, any vacancy registration form required under Regulation 1013(K) and any supplemental registration statement approved and required by the Board. **For units covered by B.M.C. 13.76.050I and B.M.C. 13.76.050O, "rent registration statement" shall include the "Registration Statement for Partially Covered Units", all required "Tenancy Registration Forms For Partially Covered Units" and any other supplemental or additional registration forms the Board requires.** This subsection is intended to clarify the existing requirements concerning filing of initial, annual, vacancy and supplemental registration statements.

(E) When the Board determines that it is reasonably necessary to carry out the purposes of the Ordinance, the Board may require landlords to furnish information missing from any initial or annual registration statement or to complete a supplemental registration statement approved by the Board. This may include information which was requested on the 1980-81 registration statement but which was not required by this regulation, or specifically enumerated in the Ordinance at the time the registration statement was filed but which the Board finds it necessary for proper administration of the Ordinance. Any such request for information request for completion of a supplemental registration statement shall be responded to within a reasonable time period to be determined by the Board. If the landlord is unable to supply the information requested, the landlord shall comply with subsection (B). Any request for review pursuant to subsection (B) shall be made within the time specified by the Executive Director. If the landlord does not respond to the request or request review of his or her registration status within the specified time, the landlord may subsequently be held to be unregistered thereafter notwithstanding the fact that the landlord would have otherwise been deemed to have been properly registered under the law and regulations existing at the time the statement which omitted the requested information was originally filed. Any such determination of non-registration shall be prospective only.

(F) Nothing in the subsection (E), above, shall be construed to relieve any landlord of the duty to fully register all his or her covered units and to supply all requested information merely because the Board has not advised landlord of any information which may be omitted by the landlord from the initial, annual or any supplemental registration statements.

801. Proper Filing of the Rent Registration Statement - Page 3

(G) A landlord shall be found in substantial compliance with registration requirements of the Ordinance and Regulation when:

(1) The landlord has made a good faith effort to comply with the Ordinance and regulation concerning registration sufficient to reasonably carry out the intent and purpose of the Ordinance and Regulations; and

(2) The landlord has cured any defect in compliance in a timely manner after receiving notice of a deficiency from the Board.

[Regulation 801 revised in its entirety effective April 13, 1983; Subsection 801(G) adopted March 3, 1986; amended November 21, 1986; Subsections 801 (A), (B), (E) and (F) amended effective June 6, 1997; Subsection (D) amended December 27, 1998.]

1311. Alleging Compliance in Complaint

- (A) In any action to recover possession of a rental unit covered by the Ordinance, except an action to recover possession under subsections 13(a)(7) and 13(a)(8), a landlord shall allege in the complaint for possession substantial compliance with the implied warranty of habitability and compliance with Section 10 (Rent Ceiling) of the Ordinance for the rental unit which is the subject of the action to recover possession, and a landlord shall allege in the complaint for possession compliance with Section 8 (Rent Registration) of the Ordinance for all rental units in the property which contains the rental unit which is the subject of the action to recover possession.
- (B) For purposes of this regulation, a landlord shall not be in compliance with Section 8 (Rent Registration) of the Ordinance until they have filed all registration statements as articulated in Regulation 801 including all Vacancy Registration Forms for fully controlled units and Registration Statements and Tenant Registration Forms for Partially Covered Units for all current tenancies.
- (C) A landlord's failure to comply with the requirements of this regulation shall be a defense to any action for possession of a rental unit covered by the Ordinance.

[Effective Date: May 13, 1981]

City of Berkeley

Rent Stabilization Program
 2125 Milvia Street, Berkeley, CA 94704
 Phone: (510) 981-7368 (981-RENT) Fax: (510) 981-4910

REGISTRATION STATEMENT FOR PARTIALLY COVERED UNITS

Complete this form only for rental properties with single-family homes, condominiums, or dwelling units that have received a Certificate of Occupancy after 1980.

Use this form to register partially covered rental units for the first time, or to make changes to the status of a partially covered unit that has previously been registered. This form may also be used for any change in ownership, management, or mailing address for a property with partially covered units. This form must be completed and submitted, and the fee paid, **within sixty (60) days** of the change in status.

Berkeley Property Address: PLEASE PRINT LEGIBLY, OR TYPE

| | | | |
|---------------|-------------|-----|---------------------------------|
| Street Number | Street Name | Zip | Number of Units on the property |
|---------------|-------------|-----|---------------------------------|

PART I. OWNERSHIP INFORMATION

Complete this section if you are a new owner or are registering a property for the first time. List all owners of record (as reflected by the Alameda County Recorder's Office) and each owner's percentage of ownership.

- Date of purchase, or title transfer: _____
- The names of all owners of record, and the percentage of ownership for each owner must be listed for all changes in ownership.

| Name | % | Name | % |
|----------|-------|----------|-------|
| a) _____ | _____ | c) _____ | _____ |
| b) _____ | _____ | d) _____ | _____ |

PART II. MAILING ADDRESS AND PRIMARY CONTACT

Complete this section and select either an owner or one agent to receive all correspondence from the Rent Stabilization Program. Bills and correspondence may only be sent to one property; therefore please **CHECK ONLY ONE BOX** to select the billing contact:

Billing Contact: Owner Agent / Manager

| OWNER: | AGENT / MANAGER: |
|-------------------------|-------------------------|
| Name: _____ | Agency Name: _____ |
| Address: _____ | Address: _____ |
| City, State, ZIP: _____ | City, State, ZIP: _____ |
| Phone: (____) _____ | Phone: (____) _____ |
| Email: _____ | Email: _____ |

PART III. UNIT STATUS CHANGE FOR PARTIALLY COVERED UNITS

- Complete this section if you have not yet registered your partially covered property or when you are changing the status of any previously registered partially covered unit.
- This form must be completed and the fee paid within 60 days from the date a unit is rented to avoid the assessment of a penalty.

A. Registration of Partially Covered Units

(If new tenancy, a *Tenancy Registration for Partially Covered Units* form is also required.)

| Unit Designation | # of Bedrooms | Date Rented | Rent Per Month | Unit Designation | # of Bedrooms | Date Rented | Rent Per Month |
|------------------|---------------|-------------|----------------|------------------|---------------|-------------|----------------|
| | | | \$ | | | | \$ |
| | | | \$ | | | | \$ |
| | | | \$ | | | | \$ |

B. Claim of Exemption

All claims of exemption are subject to verification. If you are unclear whether an exemption applies to your unit, you should consult with a housing counselor. You may be liable for fees and possibly penalties if your units are determined, at any time, to be ineligible for the exemption you claim.

If you are claiming an exemption for more than 3 units, please use an additional form.

| Unit Designation | Exemption Designation *See list | Date of Exemption | If Owner Occupied, Owner's Name |
|------------------|------------------------------------|-------------------|---------------------------------|
| 1) _____ | _____ | _____ | _____ |
| 2) _____ | _____ | _____ | _____ |
| 3) _____ | _____ | _____ | _____ |

* List of common Exemption Designations:

| Status | Designation |
|-----------------------------------|---|
| OWNER OCCUPIED | Owner of 50% or more occupies the unit and/or shares kitchen and/or bath with tenant. |
| SECTION 8 | Registered with BHA, Section 8 program. |
| VACANT and NOT AVAILABLE FOR RENT | This unit is not now occupied by an owner or tenant, and is not available to be rented. |
| OCCUPIED RENT-FREE | This unit is provided to the tenant by the owner, rent-free, AND does not require any service(s) from the tenant in exchange for the rent-free privilege. |
| **OTHER | **If you use this designation, you must explain why the unit is exempt. |

**Explanation _____

I declare under penalty of perjury that the above information is true and correct to the best of my knowledge and belief.

Signature Date

For Office Use Only

City of Berkeley

Rent Stabilization Program

2125 Milvia Street, Berkeley, CA 94704

Phone: (510) 981-7368 [981-RENT] Fax: (510) 981-4910

E-mail: rent@cityofberkeley.info • Web: www.cityofberkeley.info/rent

Date: _____

Initials: _____

TENANCY REGISTRATION FORM FOR PARTIALLY COVERED UNITS

(Instructions provided on back)

Please file this form **only** for tenancies in:

Single-family homes, condominiums, and dwelling units that received a Certificate of Occupancy after 1980.

Berkeley Rental Property Address: PLEASE PRINT LEGIBLY or TYPE

| | | | | |
|---------------|-------------|--------|---------------|------------------|
| | | | | |
| Street Number | Street Name | Unit # | # of Bedrooms | # of Units/Prop. |

Owner/Agent Information (If *new* owner or agent, please also complete an *Amended* Registration Statement):

OWNER: Check if new owner/address

AGENT/MANAGER: Check if new agent/address

Name: _____

Name: _____

Address: _____

Address: _____

City, State, ZIP: _____

City, State, ZIP: _____

Phone: (____) _____

Phone: (____) _____

Email: _____

Email: _____

Send all future correspondence and bills to: **OWNER**

AGENT/MANAGER

Current Tenancy Information:

Beginning date of this tenancy: ____/____/____ Number of Tenants: _____ Initial Rent: \$ _____

Current Rent (if different): \$ _____ Date of Last Rent Increase: ____/____/____

Housing Services: Check the Housing Services *provided* or *paid* by the Owner for the individual unit.

Storage Gas Electricity Water Garbage Parking Laundry Access Heat
Appliances Other _____

Does Lease Prohibit Smoking? Yes No **Effective date of smoking prohibition:** ____/____/____

Prior Tenancy Information: Ending date of prior tenancy: ____/____/____ Voluntary vacancy? _____

Termination by Owner _____ Other (explain): _____

Check one: I am the owner or the owner's agent. I am the tenant (please attach lease agreement).

Declaration: I hereby declare under penalty of perjury that all the information in this Tenancy Registration Form is true and correct to the best of my knowledge and belief.

PRINT Name

Signature

Date

Tenancy Registration for Partially-Covered Units

This form is required **ONLY** for rental units subject to BMC 13.76.050(O):

- Single-family homes, where the current tenancy began after Dec. 31, 1995
- Condominium units
- Dwelling units built after 1980 that have received a Certificate of Occupancy

A Tenancy Registration form must be filed for all non-exempt units annually. The property is deemed out of compliance with registration requirements until filing is completed. (Regulation 1013(K))

Information on this form is used to update the Rent Stabilization Program's records to reflect the current tenants' rent, the number of tenants, and the services included with the rent.

If this unit was previously exempt and is now subject to registration requirements as provided by BMC 13.76.050(N) or BMC 13.76.050(O), a registration fee will be due. You may call our Registration Unit (510) 981-4920 for more information.

If the owner fails to timely file Tenancy Registration information or if the tenant disagrees with the information on the Tenancy Registration form filed by the owner, the tenant may file this form setting forth the required information. The tenant should attach copies of the written rental agreement(s) or other documents showing the correct information.

INSTRUCTIONS FOR COMPLETING THIS FORM

Berkeley Property Address - Write the complete mailing address for this unit. Provide the number of bedrooms in this unit and the total number of units on this property in the appropriate places.

Owner and Agent Information - Provide the name, telephone number and email address of the owner and the owner's authorized representative, if applicable. If the owner's address is different than the address in the Rent Board's records, or if this is a new owner, please check "New owner/address" and file an Amended Registration Statement. If this is a new agent, check "New agent/address." If you list both an owner and an agent, please let us know to whom to send all future notices, correspondence and bills by marking an "X" to select Owner or Agent.

Current Tenancy Information - Indicate the NUMBER of tenants, the DATE the tenant(s) moved in and the total monthly rental payment for the unit. Also check the boxes for the HOUSING SERVICES paid by the owner. As of May 1, 2014, B.M.C. 12.70 prohibits smoking in 100% of multi-unit housing with two or more units. This ordinance requires that leases for all tenancies starting after May 1, 2014, include prohibitions on smoking. Please indicate whether or not the current lease prohibits smoking in the unit, and the date that the prohibition on smoking took effect.

Declaration - The person completing the form must certify under penalty of perjury that all information provided is true and correct.

NOTE: Tenant names and other tenant information will be kept confidential in accordance with the Information Practices Act of 1977.