RENT STABILIZATION BOARD

DATE: October 17, 2011

TO: Honorable Members of the Berkeley Rent Stabilization Board

FROM: Matt Brown, Staff Attorney

SUBJECT: Proposed Regulation 403.5 [Rooming House definition] (Second Reading)

Background and Need for Rent Stabilization Board Action:

The IRA/AGA/Habitability Committee requested that legal staff clarify the definition of “rooming house” and amend it to allow for individual rental units in multi-unit properties to qualify as rooming houses even if they have fewer than five rooms. Regulation 403(C)(3) currently reads:

“rooming house” means a building other than a hotel where lodging for five (5) or more persons is provided for compensation, whether direct or indirect.

Regulation 403(C)(3) was adopted from the definition of “rooming house” in the City’s Zoning Ordinance (Berkeley Municipal Code Section 23F.04.010). The Board has long interpreted Regulation 403(C)(3) to require that a rooming house contain at least five separate rooms that are rented to at least five individuals with five separate leases. The attached proposed regulation clarifies the specific requirements for rooming houses.

Single Family Homes

While Costa Hawkins prohibited the Rent Board from regulating rents for single family homes, the legislative history indicates that the single family dwelling exemption was never meant to apply to rooming houses.¹ When a landlord or his agent maintain control over who lives in each

¹ In its decision on appeal in Rojas v. Tyler (Case No. RWN-1284), the Board relied on a declaration from then Senator John Burton who clarified that, in adopting the Costa Hawkins bill, the legislature intended to exempt “single-family type dwellings,” not homes that were being operated as rooming houses. The Board has consistently followed this analysis throughout the years when advising landlords as to whether rooms in their units needed to be individually registered because the landlord was operating a rooming house.
room of a rental unit with five or more bedrooms, the Board has determined that s/he must register each room as its own rental unit. The landlord is thus afforded the flexibility to take Costa Hawkins rent increases for each room when he enters into a rental agreement with a new tenant at the property.

Proposed Regulation 403.5 makes no changes to the way the Board has always treated rooming houses in single family homes – the unit will be a rooming house when the landlord rents five or more separate rooms to five or more individuals with five or more separate leases. As was made clear by the Board’s ruling in Rojas v. Tyler (Case No. RWN-1284), however, proposed Regulation 403.5 does not allow a landlord to claim a single family home exemption through the guise of renting the entire property under a single lease. In order to qualify for an exemption under a single lease, there must be a household or group living arrangement conceived and brought together by the occupants. The Board will require that the unit be rented as a rooming house (with each room registered as a separate unit) if the landlord or his agent maintains control over whom he selects to live in each room of the rental unit, sets the rent for each room, and the unit otherwise qualifies as a rooming house.²

**Multi-unit Properties**

Costa Hawkins allows for more flexibility for local jurisdictions to regulate units in multi-unit properties. Proposed Regulation 403.5 lowers the number of required rooms to four to be considered a rooming house in multi-unit properties. This will not, however, stray from the definition of rooming houses in B.M.C. 23F.04.010 as there will still be five or more rooms on the entire property. Thus, the threshold for a rental unit in a multi-unit property to qualify as a rooming house will be lowered to at least four rooms with at least four separate leases instead of five.

Since the Board would change the rooming house requirements as they relate to units in multi-unit properties if it passes proposed Regulation 403.5, there may be some units that convert to rooming houses that have heretofore been rented as single units. The sitting tenants in these units should not experience rent increases as their portion of the rent for the entire unit will become the rent ceiling for the individual room (rental unit) they currently occupy. In other words, the tenant will maintain her share of the rent-controlled ceiling for the entire unit; it will now just be tied to her room rather than being a portion of the whole unit. The landlord, in turn, will be able to rent any vacant room in the rooming house for market rent assuming that no other restrictions apply. Landlords who rent rooming houses in multi-unit properties will henceforth be required to register each room separately and pay registration fees for each room as they would any other individual rental unit.

² Likewise, fraternity and sorority houses that rent rooms to non-members will still be required to register those individual rooms as rental units. The Board is currently considering a new policy with regard to registering rooms in fraternities and sororities that are rented to non-members. The Board may wish to revise proposed Regulation 403.5 once the policy regarding Greek organizations is finalized. This should not, however, affect the passage of the current proposed legislation should the Board find it acceptable.
Landlords will not be able to force tenants to enter into a rooming house situation. If the tenants have been living in a group living arrangement under a single lease agreement, the landlord will not be able to compel them to sign separate leases in order to qualify as a rooming house. This is consistent with our policy as stated in B.M.C. 13.76.130A.4. (prohibiting the eviction of tenants for refusing to sign a lease that is not substantially identical to the prior agreement). Proposed Regulation 403.5 will only affect tenants who have always lived in a rental unit where the landlord maintained control over the selection and placement of tenants and signed separate leases with each new tenant or where the tenants voluntarily agree to enter into such an arrangement. This regulation will not affect tenants who signed the same lease and desire to remain in a group living arrangement under one lease. Likewise, it will not affect any sub-tenants who subsequently move into the rental unit as long as the original lease agreement remains in effect.

**Exemption under B.M.C. 13.76.050F. (Owner-occupied duplex)**

Commonly referred to as the “Golden Duplex” exemption, the Ordinance entirely exempts duplexes from the Rent Ordinance when:

1. An owner of record holding at least 50% interest in the property occupied one of the units as his/her principal place of residence on December 31, 1979; and

2. A current owner of record holding at least 50% interest in the property occupies one of the units as his/her principal place.

Today, even if a landlord occupies a unit in a duplex as his/her principal residence and would otherwise qualify for an exemption under B.M.C. Section 13.76.050F., the Board currently requires that landlord to register as a rooming house if the landlord rents at least five rooms individually to at least five tenants under separate rental agreements in the other unit on the property. In other words, if the landlord is operating the other unit on the property as a rooming house, s/he is not able to claim the “Golden Duplex” exemption – assuming there are five rooms rented separately in the tenant-occupied unit, the property would be registered as a six-unit property (five registered tenant units and one exempt owner-occupied unit) by virtue of the landlord operating a rooming house.

Historically, staff has always advised LLs that the other unit will not qualify as a rooming house if the landlord rents four or fewer rooms separately in the other unit. Proposed Regulation 403.5 will not modify this – it will allow the landlords to continue to claim the “Golden Duplex” exemption if s/he is renting four or fewer rooms in the other unit. In other words, the lower number of rooms that would qualify other rental units in multi-unit properties would not apply to owner-occupied duplex living situations. The Board has often sought to protect this exemption

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3 If, however, the landlord ceases to occupy as his/her principal residence a unit in the duplex in the above example, not only would s/he no longer be able to claim the “Golden Duplex” exemption, but the landlord would be required to register as a rooming house if s/he continued to rent to at least four tenants under separate rental agreements in one of the units on the property. The requirements under proposed Regulation 403.5(B)(2) would then apply.
if the owner would otherwise qualify for it, and legal staff believes it important to extend this exemption whenever possible.

**Grounds for Review**

There are five potential scenarios that would cause a party to seek Rent Board review:

1. The tenant claims that a unit must be separately registered as a rooming house because it otherwise qualifies as such under proposed Regulation 403.5. The tenant must file a tenant petition for rent withholding (RWN), claiming failure to properly register, as outlined in Regulation 522. An RWN petition will allow the hearing examiner to determine whether there are units at the property that must be registered, and if the tenant’s unit qualifies as a rooming house, the Board will be able to mandate that it be registered as such.

2. The tenant claims that the unit should not be separately registered as a rooming house. Proposed Regulation 403.5 provides that a tenant can file a petition under Regulation 1018 to determine whether the landlord can set a rent for a unit within a rooming house or whether the unit should remain registered as a single rental unit with a single rent ceiling.

3. The landlord claims that the unit should be separately registered as a rooming house. The landlord has the same remedy as the tenant in this instance – file a petition under Regulation 1018 to seek a determination on his/her eligibility to set the rent ceilings for the individual units in the rooming house.

4. The landlord claims that the unit in a multi-unit building should not be separately registered as a rooming house. The landlord can use the same remedy as described in number 3 above – file a petition under Regulation 1018 to seek a determination that the landlord can set the rent level for one unit as opposed to separate units required if it were a rooming house.

5. If a landlord of a single family home disputes that a unit must be individually registered as a unit in a rooming house, s/he must file a request for hearing on exemption status under Regulation 521.

**Amendment to Regulation 403**

Legal staff is also proposing that Regulation 403(C)(3) be revised to include the language “and as further defined in Regulation 403.5” at the end of the rooming house definition. Assuming the Board passes proposed Regulation 403.5, it would be helpful to include a reference to the new regulation that further defines rooming house.

Legal staff also proposes to change the word “building” to “property” to make it consistent with the wording in proposed Regulation 403.5.
Conclusion

While the application of 403(C)(3) has been consistent since the Board passed it, Regulation 403(C)(3) has long been a source of confusion for staff and the public alike. Proposed Regulation 403.5 clarifies the requirements to be considered a rooming house. It also provides landlords with increased flexibility to operate rooming houses in smaller units in multi-unit buildings should they choose to operate their rental property in this manner.

Attached is a draft of proposed Regulation 403.5 and revisions to Regulation 403.

Name and Telephone Number of Contact Person:

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403.5 Rooming House: definition

(A) Background and Purpose. Since the Board passed Regulation 403 in 1998 a number of questions have arisen regarding the definition of “rooming house.” The Board has always defined a rooming house to mean a building with at least five rooms that are rented to at least five individuals with at least five separate leases. This Regulation is meant to clarify the specific requirements to be considered a rooming house. Since 1998, the Board has intended to make this definition consistent with the definition of “rooming house” in the City’s Zoning Ordinance (Berkeley Municipal Code Section 23F.04.010) and this continues to be the Board’s intention.

This regulation will lower the number of rooms required for a rental unit to qualify as a rooming house in multi-unit properties. Units in multi-unit properties with four or more rooms will qualify as rooming houses (assuming the other conditions are satisfied). This does not stray from the definition of rooming houses in B.M.C. 23F.04.010 as there will still be five or more rooms on the entire property.

Unlike other group living arrangements where the remaining tenants choose tenants to replace those who vacate the unit, rooming houses allow the landlord or his agent to maintain control over who rents each room/unit within the rooming house. A landlord may not, however, rent an entire property under a single lease as a means to avoid registering the unit as a rooming house. The Board will examine whether the landlord is renting to a household or group living arrangement conceived and brought together by the occupants when determining whether a unit qualifies for any claimed exemption.

(B) Rooming House. For purposes of this subchapter, a rooming house shall consist of a rental unit on a property which property contains at least five rooms rented individually to at least five tenants under separate rental agreements. Each room in a rooming house must be individually registered with the Board as a separate rental unit. Each time a tenant permanently surrenders possession of a rental unit in the rooming house, the landlord is entitled to a vacancy rent adjustment subject to the restrictions of Chapter 10 of these regulations. The landlord or his agent shall maintain control over who occupies the various rental units within the rooming house as they become vacant. Use of a single lease will not convert a rooming house into a group living arrangement if the landlord or his agent maintains control over tenant replacement.

(1) Single Family Homes A single family home must contain at least five separately rented rooms to be considered a rooming house.

(2) Multi-Unit Properties A unit within a multi-unit property may be rented as a rooming house provided the rental unit to be rented as a rooming house contains at least four separately rented rooms.

(3) A landlord may not compel the tenants or sub-tenants to sign separate
agreements in order to qualify as a rooming house if a single lease agreement remains in effect, or the tenants are living under a group living arrangement as defined by Chapter 10 of these regulations. If the tenants and landlords agree, however, the parties may voluntarily choose to convert their tenancy from a group living arrangement with one lease agreement to a rooming house with multiple agreements if the unit otherwise qualifies.

(C) **Exemption under B.M.C. 13.76.050F. (Owner-occupied duplex).** If a property owner otherwise qualifies for an exemption under B.M.C. Section 13.76.050F., the property owner is entitled to claim that exemption if the other unit on the property contains four or fewer separately rented rooms.

(D) **Disputes regarding rooming house designation.** A tenant who claims that a rental unit must be registered as a rooming house under this regulation may obtain review of the unit’s status by filing a tenant petition for rent withholding for non-registration as outlined in Regulation 522. A landlord or tenant who disputes the landlord’s eligibility to establish the rental unit’s initial rental rate as allowed by the Costa-Hawkins Rental Housing Act (Civil Code Section 1954.50, et seq.) under this regulation may file a petition under Regulation 1018.
403. Rental Unit: definition

For purposes of these regulations, “rental unit” is defined as either of the following:

(A) a dwelling unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation; or

(B) a room or suite of rooms in a hotel, motel, rooming house, boarding house or other group living accommodations building that is intended for human habitation and is not a Transient Unit, as defined in Regulation 504, or otherwise exempted from the Rent Ordinance.

(C) As used in this section, the following definitions shall apply:

(1) “hotel” means any building or portion thereof containing six (6) or more guest rooms used, designed or intended to be used, let or hired out for occupancy by six or more transient individuals for compensation, whether direct or indirect.

(2) “motel” means an establishment which provides overnight lodging and parking in which the rooms are usually accessible from an outdoor parking lot.

(3) “rooming house” means a building other than a hotel where lodging for five (5) or more persons is provided for compensation, whether direct or indirect, and as further defined in Regulation 403.5.

(4) “boarding house” means a building other than a hotel where lodging and meals for five (5) or more persons are provided for compensation, whether direct or indirect.

(5) “group living accommodations” means residential accommodations provided in dormitories, fraternity houses, sorority houses, rooming houses, boarding houses, homes for aged persons, family boarding homes for aged persons, and similar uses, but not including hospitals, nursing homes, hotels, motels or automobile courts.

(D) The term “rental unit” shall not be construed to include an aggregation of two (2) or more dwelling units, as defined in subsection (B), or rooms or suites of rooms, as defined in subsection (C).

[Effective Date: 08/21/98; amended 10/17/11.]