

July 29, 2011

Via email

Alexis Taylor, Esq., General Counsel
D.C. Office of Human Rights
441 4th Street, NW, Suite 570 North
Washington, DC 20001
Email: alexis.taylor@dc.gov

Re: Proposed Chapter 10 of Title 4 of the D.C. Municipal Regulations: Housing and Commercial Space

Dear Ms. Taylor:

On behalf of the Legal Aid Society of the District of Columbia (Legal Aid),¹ I write to comment in support of the proposed amendments to Chapter 10 of Title 4 of the D.C. Municipal Regulations: Housing and Commercial Space.

In conjunction with other local and national NGO participants, Legal Aid contributed to the attached redline, and we encourage inclusion of all of the redline recommendations. However, we submit a separate comment to emphasize the following select issues:

Prohibited Practices - Exemption

In addition to the redline changes, we suggest that a provision be added to specifically exempt certain housing providers from the prohibited practices related to intrafamily offenses in Section 1001.1 where the housing provider's practices are carried out in order to provide housing to victims of intrafamily offenses. As currently drafted, the draft regulations may lead to unintended consequences.

For example, 1001.1(c) prohibits making, printing, publishing any statement or advertisement with respect to rental of a dwelling that indicates a preference for, or an intention to make such preference for a person's status as a victim of an intrafamily offense. This provision would make it a violation of the D.C. Human Right's Act for a housing provider to print a pamphlet indicating that there is safe rental housing available specifically for victims of an intrafamily offense. This provision may also prohibit a housing provider from having a preference on their wait list for victims of an intrafamily offense.

¹ The Legal Aid Society of the District of Columbia was formed in 1932 to "provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs." Over the last 77 years, tens of thousands of the District's neediest residents have been served by Legal Aid staff and volunteers. Legal Aid currently works in the areas of housing, family law, public benefits, and consumer.

Transfer Policy

Currently, the Violence Against Women's Act provides some guidance to certain providers of federally subsidized housing regarding transfers for victims of domestic violence who fear for their safety. Unfortunately, the protections of the Violence Against Women's Act do not govern transfers in all federally subsidized housing and all housing in the District of Columbia.

For example, victims of domestic violence living in federally-subsidized project-based Section 8 housing have very limited, if any, options for transferring to other subsidized housing when they need to leave their current housing in order to protect their safety. Although a housing provider may own or manage multiple federally-subsidized project-based Section 8 properties, there is nothing in the law that requires them to transfer a victim of domestic violence from an apartment in one federally-subsidized property to another such property.

We strongly support the proposed regulations because they will require housing providers, such as owners or managers of multiple project-based Section 8 properties, to transfer a victim of an intrafamily offense to alternative housing that is owned or managed by the provider when needed to provide safe housing to the victim. This will allow victims of an intrafamily offense to retain their housing subsidy if they need to move from their current home for safety reasons. Thus, victims of an intrafamily offense would no longer need to choose between retaining affordable housing and living in safe housing.

Notice of Tenant Rights and Responsibilities

To the extent the D.C. Office of Human Rights (OHR) will require housing providers to provide tenants with notices of tenant rights and responsibilities, it would be preferable for the responsibility to create and translate the notice to fall on OHR rather than on housing providers.

It is onerous and will likely be costly for housing providers to create and provide notice of rights and responsibilities in each tenant and in each tenant's primary language if the tenant is limited English proficient. An onerous requirement like this may provide a disincentive for housing providers to rent to limited English proficient tenants. For that reason, as suggested in the redline recommendations, we recommend that OHR create and translate any such notices and make them available to housing providers, upon request.

We thank you for the opportunity to submit our comments.

Sincerely,



Rosanne Avilés

Legal Aid Society of the District of Columbia

D.C. OFFICE OF HUMAN RIGHTS

NOTICE OF PROPOSED RULEMAKING

The Director of the Office of Human Rights, pursuant to section 301(c) of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1403.01(c)(2001)), hereby gives notice of the intent to amend chapter 10 (Housing and Commercial Space) of title 4 (Human Rights) of the District of Columbia Municipal Regulations (DCMR).

The purpose of this amendment is to provide updated guidelines for transactions in real estate pertaining to dwelling and commercial space accommodations, especially those involving the protected category of status as a victim of an intrafamily offense. Specifically, this amendment would provide protection from eviction to victims of intrafamily offenses; provide release from a lease should a victim's safety be in jeopardy; and, generally, prohibit housing discrimination against victims of intrafamily offenses. The Director has also proposed a number of substantial additions with respect to the rights and responsibilities of housing providers and tenants and a number of clarifying amendments to other provisions of the chapter.

The Director also gives notice of the intent to take final rulemaking action to adopt these proposed rules not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Chapter 10 of title 4 DCMR is deleted in its entirety and amended to read as follows:

CHAPTER 10 HOUSING AND COMMERCIAL SPACE

Section

- 1000 General Provisions: Scope and Purposes
- 1001 Prohibited Practices
- 1002 Additional Protections for Victims of an Intrafamily Offense
- 1003 Exceptions
- 1004 Responsibilities of the Director
- 1099 Definitions

1000 GENERAL PROVISIONS: SCOPE AND PURPOSES

- 1000.1 This chapter shall apply, with specifically defined exceptions, to all transactions in real estate pertaining to dwelling and commercial space accommodations within the District of Columbia.
- 1000.2 The District of Columbia Office of Human Rights (OHR) adopts this chapter for the following purposes:
 - (a) To provide for fair housing throughout the District of Columbia to all its residents regardless of race, color, religion, national origin, sex, age, marital

status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, source of income, status as a victim of an intrafamily offense, or place of residence or business; and, to that end, to prohibit discriminatory practices with respect to residential housing or commercial space accommodations by any person or group of persons, in order that the peace, health, safety, prosperity, and general welfare of all the residents of the District of Columbia may be protected and ensured;

- (b) To facilitate OHR in carrying out its mandate under the District of Columbia Human Rights Act of 1977 (Act), effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code §§ 2-1401.01, *et seq.*(2001), specifically sections 221 through 224 (D.C. Official Code §§ 2-1402.21 – 1402.24 (edition year));
- (c) To notify interested and affected persons about OHR's interpretation of the housing and commercial space provisions of the Act pertaining to the implementation of its mandate under the Act; to specify the application of the housing and commercial space provisions to specific circumstances; and to establish principles of interpretation for guidance in other circumstances; and
- (d) To facilitate OHR's internal processing of cases relating to discrimination in housing and commercial space accommodations.

1001 PROHIBITED PRACTICES

1001.1 It shall be an unlawful discriminatory practice for any person, on the basis of the race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, source of income, status as a victim of an intrafamily offense, or place of residence or business of any individual, to do the following:

- (a) Refuse to sell or rent, or refuse to negotiate for the sale or rental of, a dwelling or commercial space, or otherwise refuse to make a dwelling or commercial space unavailable;
- (b) Discriminate in the terms or conditions of a transaction in real property, including but not limited to a transaction involving the buying or renting of a dwelling or commercial space;
- (c) Make, print, publish, or cause to be made, printed, or published, any statement or advertisement with respect to the sale or rental of a dwelling, indicating a limitation on, or a preference for, or an intention to make such

preference, limitation, or discrimination against, persons on the basis of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, source of income, status as a victim of an intrafamily offense, or place of residence or business. Prohibited practices may take the form of, but not be limited to, the following:

- (1) A word, phrase, photograph, illustration, symbol, or form indicating availability or unavailability;
 - (2) An expression to an agent, broker, employee, prospective seller or renter, or any other person of a preference for, or limitation on, any purchaser or renter for a prohibited reason;
 - (3) Selecting a medium or location for advertising the sale or rental of a dwelling that denies information about housing opportunities to a particular segment of the housing market; or
 - (4) Refusing to publish advertising for the sale or rental of a dwelling, or requiring different charges or terms for such advertising;
- (d) Represent that a dwelling is unavailable for inspection, sale, or rental, when, in fact, it is available, or similarly to fail to disclose or offer to show all properties listed or held for sale or rent within a requested price or rental range, regardless of location. Prohibited practices include, but are not limited to, the following:
- (1) Providing inaccurate or untrue information about the availability of a dwelling for sale or rental to any person, including a tester, based on one (1) of the proscribed criteria;
 - (2) Enforcing a covenant or other deed, trust, or lease provision that precludes the sale or rental of a dwelling on such basis; and
 - (3) Limiting information, by word or conduct, regarding the availability of suitably priced dwellings, based on one (1) of the proscribed criteria;
- (e) Include in any document related to a transaction in real property any restrictive covenant purporting to restrict occupancy or ownership of real property;
- (f) Designate any block, neighborhood, or area of the District of Columbia as unsuitable for the making of mortgage loans, or reject applications for mortgage loans, or vary the terms of a mortgage loan upon property

within that block, neighborhood, or area;

- (g) Deny a loan or other financial assistance; refuse to guarantee, extend, or renew a loan; refuse to accept a deed of trust or mortgage; or otherwise refuse to make funds available for the purchase, acquisition, construction, alteration, rehabilitation, repair, or maintenance of real property; to impose different terms or conditions on the financing; or fail or refuse to provide information regarding the availability of loans or other financial assistance, application requirements, procedures or standards for review and approval of loans or other financial assistance, or provide inaccurate information;
- (h) Refuse to provide title insurance or other insurance relating to the ownership or use of any interest in real property, or to vary the terms or premiums of the insurance;
- (i) Discriminate in appraising the value of real estate or in fixing of any appraisal fee;
- (j) Act as a real estate broker, salesperson, or agent, including a rental agent, with respect to any transaction in real estate, which requires the broker, salesperson, or agent to discriminate on a prohibited basis. This shall include entering into a listing agreement which has the effect or purpose of discriminating on a prohibited basis;
- (k) Deny any person access to, or membership or participation in, any multiple listing service, real estate broker's organization, or facility relating to the business of selling or renting real property, or to discriminate against any person in the terms and conditions of such access, memberships, or participation. Prohibited actions shall include, but not be limited to, the following:
 - (1) Setting different fees for access to, or membership in, a multiple listing service;
 - (2) Denying or limiting benefits accruing to members in a real estate broker's organization;
 - (3) Imposing different standards or criteria for membership in a real estate sale or rental organization; or
 - (4) Establishing geographic boundaries or office location or residence requirements for access to, or membership or participation in, a multiple listing service, real estate broker's organization, or other service, organization, or facility relating to the business of selling or renting dwellings;

- (l) Discriminate in furnishing repairs, improvements, or any related services to a tenant or lessee in connection with real property;
- (m) Solicit or cause to be made, in connection with any transaction in real property, any written or oral inquiry or record concerning a prohibited basis, except inquiries or records made or kept in connection with a legitimate business purpose. Inquiries regarding source of income shall be made only to verify an applicant's total lawful income;
- (n) Employ a prohibited basis in determining whether a person satisfies any occupancy, admission, enrollment, eligibility, membership, or other requirement or condition which applicants must satisfy respecting any transaction in real property;
- (o) Engage in any of the following credit practices in connection with a transaction in real property:
 - (1) Deny credit to an applicant or class of applicants where other applicants of like overall credit worthiness are granted credit;
 - (2) Impose special requirements or conditions upon an applicant or class of applicants, such as requiring co-obligors or larger than usual down-payments, where similar requirements or conditions are not imposed upon applicants of like overall credit worthiness;
 - (3) Impose credit terms or conditions which intentionally have a discriminatory effect or which cannot be justified by business necessity;
 - (4) Refuse to consider all lawful sources of an applicant's income in evaluating the applicant's credit worthiness and income eligibility;
or
 - (5) Employ a prohibited basis in a decision to grant, withhold, extend, or renew credit, or in the fixing of credit lines or rates, or of the terms or conditions of credit;
- (p) Restrict or limit the number of occupants using any real property, except in accordance with health, safety, and other regulations promulgated by an authorized agency of the District of Columbia government;
- (q) Coerce, intimidate, threaten, interfere with, or otherwise harass anyone exercising, or encouraging others to exercise, their rights granted under the Act or this chapter in the ownership, occupancy, or leasing of any real property; or retaliate or discriminate against any person because he or she

has opposed any practice forbidden under this chapter or the Act, or because he or she has filed a complaint, testified, or assisted in any proceeding under the Act;

- (r) For profit, induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry or prospective entry of persons into a neighborhood. It is not necessary that there was, in fact, profit, as long as profit was a motivating factor. Prohibited actions include, but are not limited to, the following:
 - (1) Engaging in conduct that conveys the impression that a neighborhood is undergoing, or is about to undergo, a change in demographics in order to encourage the person to offer a dwelling for sale or rental; or
 - (2) Encouraging any person to sell or rent a dwelling through assertions that the entry or prospective entry of persons can or will result in undesirable consequences for the project, neighborhood, or community, such as the following:
 - (A) A lowering of property values in an area;
 - (B) An increase in criminal or antisocial behavior in an area;
 - (C) A decline in the quality of schools and other public services in an area;
 - (D) A material change in the racial or ethnic composition of an area; or
 - (E) A decrease in the desirability of occupying property in an area;
- (s) To make, print, publish, or cause to be made, printed or published, a discriminatory notice, statement, or advertisement that includes, but is not limited to, the following:
 - (1) Using words, phrases, photographs, illustrations, symbols, or forms which convey that dwellings are available or not available to a particular group of persons;
 - (2) Expressing to agents, brokers, employees, prospective sellers or renters, or any other persons a preference for, or limitation on, any purchaser or renter;
 - (3) Selecting media locations for advertising the sale or rental of

dwellings which deny particular segments of the housing market information about housing; or

(4) Refusing to publish advertising for the sale or rental of dwellings, or requiring different charges or terms for such advertising; or

(t) Discriminate in the purchasing of loans. Unlawful conduct includes, but is not limited to, the following:

- (1) Purchasing loans or other debts or securities which relate to, or which are secured by, dwellings in certain communities or neighborhoods, but not in others, because of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, source of income, status as a victim of an intrafamily offense, or place of residence or business;
- (2) Pooling or packaging differently loans or other debts or securities which relate to, or which are secured by, dwellings because of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, source of income, status as a victim of an intrafamily offense, or place of residence or business; or
- (3) Imposing or using different terms or conditions on the marketing or sale of securities issued on the basis of loans or other debts or securities which relate to, or which are secured by, dwellings because of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, source of income, status as a victim of an intrafamily offense, or place of residence or business.

1001.2 It shall be an unlawful discriminatory practice to engage in any act prohibited in the Act or this chapter wholly or partially based on the fact that a person has one (1) or more children who reside with that person.

1001.3 There shall be a rebuttable presumption that an unlawful discriminatory practice has occurred, if the person alleging discrimination has one (1) or more children who reside with that person and if any of the acts prohibited in the Act or this chapter are done to maintain residential occupancies more restrictive than the following:

(a) In an efficiency apartment, two (2) persons; or

- (b) In an apartment with one (1) or more bedrooms, two (2) times the number of bedrooms plus one (1).
- 1001.4 When occupancy limitations are imposed, the presumption of discrimination referred to in section 221(c)(2) of the Act (D.C. Official Code § 2-1402.21(c)(2)(2001) may be overcome by demonstrating that occupancy limitations are in accordance with District of Columbia regulations or law at the time the occupancy limitations were imposed.
- 1001.5 It shall be an unlawful discriminatory practice to make any representation, whether explicit or implicit, with the intent of restricting or limiting, or has the effect of restricting or limiting, the housing choice of any person in connection with seeking, negotiating for, buying, or renting a dwelling that, on account of a prohibited basis, discourages that person from inspecting, purchasing, or renting the dwelling, by conduct that includes, but is not limited to, the following:
- (a) Exaggerating drawbacks or not informing the person of desirable features of a community, neighborhood, or development;
 - (b) Communicating that any prospective purchaser would not be comfortable or compatible with existing residents of a community, neighborhood, or development; or
 - (c) Assigning the person to a particular section of a community, neighborhood, or development.
- 1001.6 It shall be unlawful to make an inquiry to determine whether an applicant for a dwelling, a person intending to reside in that dwelling after it is sold, rented, or made available, or any person associated with that person, has a disability, or to determine the nature or severity of any disability, except that the following inquiries shall not be prohibited, if these inquiries are made of all applicants, regardless of disability:
- (a) Inquiry into an applicant's ability to meet the requirements of ownership or tenancy;
 - (b) Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with disabilities or to persons with a particular type of disability;
 - (c) Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with disabilities or to persons with a particular type of disability;
 - (d) Inquiry into whether an applicant for a dwelling is a current alleged abuser or addict of a controlled substance; or
 - (e) Inquiry into whether an applicant has been convicted of the illegal

manufacture or distribution of a controlled substance.

1001.7 It shall be an unlawful discriminatory practice for any person to refuse to permit, at the expense of a disabled person, reasonable modifications of existing premises that are occupied by or to be occupied by a disabled person, if the proposed modifications may be necessary to afford the disabled person full enjoyment of the premises. The following provisions shall apply with respect to rental property:

- (a) A landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the premises to the condition that existed prior to the modification;
- (b) A landlord may condition permission for a modification on the renter's providing a reasonable description of the modification in advance of the proposed work, as well as assurances that the work will be completed in a workmanlike manner; and
- (c) A landlord may not increase any required security deposits for disabled persons.

1001.8 It shall be an unlawful discriminatory practice to engage in conduct relating to the provision of housing, or of services related to the provision of housing, that, on account of a prohibited basis, results in the following:

- (a) Discharging or taking other adverse action against an employee because he or she refused to participate in a discriminatory housing practice;
- (b) Employing codes or other devices to segregate or reject applicants, purchasers, or renters, refusing to take or to show listings of dwellings, or refusing to deal with certain brokers or agents because they or their clients are of a particular race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, source of income, status as a victim of an intrafamily offense, or place of residence or business; or
- (c) Denying or delaying the processing of an application made by a purchaser or renter, or refusing to approve such a person for occupancy in a cooperative or condominium, on a prohibited basis.

1001.9 The D.C. Office of Human Rights shall make a notice of tenant rights and responsibilities available to all housing providers, upon request. This notice shall include:

- (a) Tenants' rights under the Act and applicable federal laws;
- (b) The procedures for exercising the tenants' rights;

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(c) Contact information for the OHR and appropriate local domestic violence, sexual assault, legal, and social services providers; and

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(d) A notification that a copy of the notice can be provided for free, upon request, in each pertinent language covered by 4 D.C.M.R. § 1205.16, with instructions for how to make this request. This notification shall be translated into each language covered under 4 D.C.M.R. § 1205.16 and shall be included with each notice of tenant rights and responsibilities.

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1001.9.1 Housing providers shall provide the notice referenced in Section 1001.9 to all tenants and employees.

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(a) The notice shall be included with all leases, denial letters, notices of proposed or actual eviction, notices of proposed or actual housing subsidy termination, and in connection with any recertifications;

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(b) The notice shall be posted in the common areas of the housing accommodation.

1001.9 Housing providers shall provide reasonable notice of rights and responsibilities to all tenants and employees which include:

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(a) Tenants' rights under the Act and applicable federal laws;

(b) The procedures for exercising the tenants' rights;

(c) Contact information for the OHR and appropriate local domestic violence, sexual assault, legal, and social services providers;

(d) Written notice to the tenants and applicants for housing with all leases, denial letters, notices of proposed or actual eviction, notices of proposed or actual termination, and in connection with annual recertifications;

(e) Written notice in a format that is understandable to the tenant, particularly with respect to individuals who have limited English proficiency or are disabled;

Written notice at the initial lease signing and at each recertification meeting, as applicable to tenants with Housing Choice Voucher or Project Based Section 8 housing, which notice each adult tenant shall sign as an acknowledgement of having received the notice; and

(g) Posted notice of rights in the common areas of the buildings;

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OHR will make notice of tenant rights and responsibilities accessible to housing

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~~providers in pertinent languages pursuant to 4 D.C.M.R. § 1205.16.~~

- 1001.10 Housing providers may seek training and technical assistance from the OHR and domestic violence, legal, and other social service providers to educate staff and tenants regarding applicable local and federal laws and protections.
- 1001.11 Nothing in this section shall be construed to supersede any provision of any federal, state, or local law that provides greater protection than this section for victims of an intrafamily offense. ~~due to an incident or incidents of domestic violence, dating violence, sexual assault, or stalking.~~
- 1001.12 In addition to the procedures under chapter 7 of this title, a victim, or the parent or legal guardian of a minor victim, who is protected under this chapter may file a complaint with the OHR, if that individual believes that he, she, or the victim is being evicted, either directly because of an intrafamily offense incident ~~of~~, or for a less direct reason that is still ultimately because of an intrafamily offense. ~~domestic violence, sexual assault, or stalking.~~ Examples include, but are not limited to, evictions based on damages to the dwelling from the ~~domestic violence~~ intrafamily offense ~~that were caused by the perpetrator~~, noise from an incident, or police presence.

1002 ADDITIONAL PROTECTIONS FOR VICTIMS OF AN INTRAFAMILY OFFENSE

- 1002.1 The provisions of this section shall apply to all District of Columbia government agencies and housing providers subject to the Act.
- 1002.2 The purpose of this section is to implement the statutory protection against discrimination in housing for victims of intrafamily offenses. ~~including domestic violence, dating violence, sexual assault, and stalking.~~
- 1002.3 In addition to the actions prohibited by § 1001, it shall be unlawful for housing providers to do any of the following acts, wholly or partially, for a discriminatory reason based on status or perceived status as a victim of an intrafamily offense:
- (a) Refusing to make a reasonable accommodation in a rule, policy, practice, or service, when the accommodation is to restore or to improve a security or safety measure and is necessary to ensure the victim's security or safety; provided, that the housing provider may charge the reasonable costs of the restoration or improvement to the tenant;
 - (b) Refusing to permit a person, or a member of the person's household, ~~who is, has been, is perceived to be, or is threatened with being a victim of an~~ intrafamily offense to terminate a rental agreement pursuant to section 507 of the Rental Housing Act of 1985, effective March 14, 2007 (D.C. Law 16-273; D.C. Official Code § 42-3505.07(Supp. 2008))

- (d) Barring or limiting the right of any person, or a member of the person's household, who is, has been, is perceived to be, or is threatened with being a victim of an intrafamily offense to call for police or emergency assistance, or imposing any penalty for calling for police or emergency assistance;
- (e) Utilizing current, or developing new, internal policies or procedures, whether oral or in writing, that create housing access barriers for victims of intrafamily offenses; and
- (f) Requiring a victim of an intrafamily offense to receive counseling or other additional related services, including but not limited to filing for or obtaining a protection order, or police report, or prohibiting contact with the perpetrator, before or after acceptance into a housing provider program, or as a condition of continued occupancy.
- ~~(f) (g) Denying, terminating a subsidy, evicting or refusing housing to a victim of an intrafamily offense premised on poor credit, rental, or criminal history that is a result of an intrafamily offense. Victims may provide documentation to the housing provider if this occurs. Acceptable documentation shall include a protection order, medical records, or documentation signed by a "qualified third party" as defined in D.C. Official Code § 42-3505.07(a)(Supp. 2008).~~

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1002.4 A housing provider subject to the Act shall have the following responsibilities:

- (a) A housing provider shall ~~make all reasonable efforts to provide safe and suitable housing to a victim of an intrafamily offense, whether through the victim's existing housing or through a transfer to alternative housing that is either managed or owned by the provider or, at the discretion of the provider, through another housing provider, regardless of head of household status. If that is not feasible and all reasonable efforts have been taken by the housing provider, victims will be given priority status and placement must occur immediately upon suitable unit availability;~~
- (b) Prior to an eviction or termination of the lease of a victim of an intrafamily offense on the basis of incidents of violence, the housing provider shall show an actual ~~and~~ imminent threat to other tenants or to those employed at or providing service to the property;
- (c) When determining whether an actual and imminent threat exists, the housing provider shall ~~consult with a domestic violence expert and~~ consider on a case-by-case basis:
 - (1) Whether the risk of injury to the third-party is serious;
 - (2) Whether the risk of injury to the third-party is ongoing; and
 - (3) Whether there is a high probability that injury or death will occur; and

(d) If the housing provider determines that the perpetrator constitutes an actual ~~and~~ imminent threat to the victim, the housing provider shall make the victim a priority in the transfer to another property managed or owned by the housing provider.

1002.5 If the victim receives a federal or District of Columbia funded housing subsidy, such as a housing subsidy through the Housing Choice Voucher program, the Project-Based Voucher program, the Section 8 Moderate Rehabilitation program, ~~has a Housing Choice Voucher or is in Project-based Section 8~~ the Section 8 Project-Based program, or the public housing program, ~~housing and~~ If the composition of a household has changed due to an ~~intrafamily offense incident of domestic violence, dating violence, sexual assault, or stalking,~~ and the dwelling is too large for the new composition of the family, the ~~housing subsidy~~ provider shall allow the tenants to stay in their current residence until appropriate and safe housing is available. The ~~housing subsidy~~ provider shall adjust a portion of the rent paid by the household, based upon the date of notification by the victim to the provider that the perpetrator is no longer residing on the property.

1002.6 If the victim receives a federal or District of Columbia funded housing subsidy, such as a housing subsidy through the Housing Choice Voucher program, the Project-Based Voucher program, the Section 8 Moderate Rehabilitation program, the Section 8 Project-Based program, or the public housing program ~~has a Housing Choice Voucher or is in Project-based Section 8 housing.~~ (The ~~housing subsidy~~ provider shall permit the tenant an absence of up to forty-five (45) days from a dwelling, if the victim is fleeing to safe housing, receiving medical assistance, or is absent for other related reasons. A brief absence shall not be considered a forfeiture of the lease or abandonment of the property, but the tenant shall be responsible for the rent during the period of absence. When a victim has an absence, the following policies and procedure shall be followed by the ~~housing~~ subsidy provider and victim:

(a) ~~1002.7~~ — The victim shall provide a verbal or written notification prior to leaving the dwelling when possible, but where such notification is not feasible, the victim shall notify the provider of such absence within a reasonable time after leaving the property.

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(b) ~~1002.8~~ — The ~~housing subsidy~~ provider shall document the request to leave the dwelling. The ~~housing subsidy~~ provider shall not require any additional information so long as the absence is no longer than forty-five (45) days.

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(c) ~~1002.9~~ — If the ~~housing subsidy~~ provider chooses to allow the victim to maintain possession of the dwelling after forty-five (45) days, the provider may request in writing one (1) form of documentation certifying that the tenant is the victim of an intrafamily offense. Acceptable documentation shall include a protection order, medical records, or documentation signed by a "qualified third party" as defined in D.C. Official Code § 42-3505.07(a)(Supp. 2008).

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1002.107 ~~If the victim receives a federal or District of Columbia funded housing subsidy has a Housing Choice Voucher or is in Project-based Sections 8 housing and is requesting an emergency transfer, a housing subsidy provider shall not require that the victim provide a waitlist waiver to seek any the emergency transfer.~~

(a) ~~1002.11~~ — ~~If a housing subsidy provider wishes to use a certification process, they shall use s may use the certification process as outlined in § 1002.14 10 when considering applications, emergency transfers, and voucher-waiting lists.~~

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1002.128 ~~A housing provider landlord shall release victims from the lease within fourteen (14) days after the housing provider receives written notice of the lease termination, as well as documentation in the form of either a copy of a protection order issued under D.C. Official Code § 16-1005 (Supp. 2008) or documentation signed by a qualified third party pursuant to D.C. Official Code § 42-3505.07(c) (Supp. 2008). After the date of the release, the tenant shall not be liable for any additional rent to the housing provider. The tenant may withdraw notice of lease termination, keeping tenancy, so long as the housing provider has not entered into a rental agreement prior to the expiration of the 14 day period.~~

1002.139 ~~The housing provider shall not keep the security deposit simply because the tenant broke the lease under circumstances reflected in this section. The security deposit shall be returned to the tenant within forty-five (45) days if there are no deductions. The housing provider shall, within the forty-five (45) day period, inform the tenant in writing if it plans to apply money toward damages and shall then refund the balance of the deposit within thirty (30) days from the date of written notification to the tenant. The housing provider shall also provide an itemized statement of repair costs.~~

~~Housing providers shall not hold victims of an intrafamily offense liable for damages to the unit caused during an intrafamily offense incident, but housing providers may litigate civilly against the perpetrator of an intrafamily offense for any damages caused during the incident instead.~~

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1002.1410 ~~A tenant who is living in the District of Columbia and who is a victim of an intrafamily offense may request protection from eviction or termination of assistance either verbally or in writing at any time, before or after including before an action for possession is filed by the housing provider. A housing provider may request written certification that the tenant is a victim of an intrafamily offense within the following parameters:~~

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(a) ~~Following a request for protection, the housing provider may ask for documentation certifying that the tenant is a victim of domestic violence, dating violence, sexual assault, or stalking. If the housing provider makes such a request, that request shall be in writing as required by 42 U.S.C. § 1437d(a)(1)(B)(2006);~~

- (b) A housing provider shall not be required to ask for certification or any other proof of the tenant's status as a victim of an intrafamily offense, ~~and may elect not to request such certification. For example, if there is a documented history of domestic violence, dating violence, sexual assault, or stalking against a tenant, in such cases, housing providers may rely on the tenant's verbal statement or on other corroborating evidence;~~
- (c) Documentation certifying that a tenant is a victim of domestic violence, dating violence, sexual assault, or stalking may include a police record, court order, medical records, or documentation provided by a qualified third party in accordance with D.C. Official Code § 42-3505.07(c)(Supp. 2008);
- (d) ~~Unless required by 24 CFR 5.(2007)(a), d~~ Documentation provided by the victim or a qualified third party need not include more than the name of the victim, ~~the name of the perpetrator,~~ and verification that the tenant reported that she or he is or was the victim of an intrafamily offense, domestic violence, dating violence, sexual assault, or stalking. A housing provider shall not require additional information beyond this required content or make additional inquiries to the qualified third party regarding the content. ÷

(1) Any documentation submitted in accordance with this section can permit the perpetrators name and/or other identifying information (for example an address) to be redacted prior to submission unless required by federal law.

- (e) A victim shall not be required to provide more than one (1) form of certification;
- (f) A housing provider shall document how and when a written request for certification was made and shall deliver written requests and any subsequent communications in a manner that will not expose the tenant to danger of further violence. A housing provider shall ask the victim to designate a method for safe communication, but if no method is designated, shall use both regular mail and certified mail to deliver the written request for certification;
- (g) A tenant who receives a written request from the housing provider for certification shall respond within fourteen (14) business days with appropriate documentation;
- (h) If a victim fails to provide requested written certification within fourteen (14) business days, a housing provider may grant an extension of the deadline for good cause and on a case-by-case basis;
- (i) A housing provider shall grant good cause exceptions liberally and take into account factors that may have contributed to the victim's inability to file in a timely manner, including limited English proficiency, cognitive limitations, the need to address health or safety issues, or the danger of further violence;

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- (j) A housing provider may not dispute a certification provided by a tenant, except as provided by law or in these regulations;
- (k) A housing provider shall follow any applicable protective or other court order(s);
- (l) If certification has been submitted by two (2) or more tenants in the same household, each claiming to be a victim of an intrafamily offense violence perpetrated by the other, the provider shall defer to any court order regarding possession of the residence. Specifically, if there is an order of protection in force, or a criminal or other court order that determines possession of the residence or makes a finding as to which party is the perpetrator, the housing provider shall follow the terms of such order and abide by such determination; and
- (m) If certifications have been submitted by two (2) or more tenants in the same household, each claiming to be a victim of an intrafamily offense violence perpetrated by the other, and there is no court determination or order of protection in force, the housing and/or subsidy provider shall may grant relief to both of the parties, including, if necessary, bifurcation of the lease, provision of a Section 8 Housing Choice Voucher, or other relief as it deems necessary.

1002.1611 Each housing provider shall maintain the confidentiality of a tenant's status as a victim of an intrafamily offense.

(a) Only the housing provider's employees who need access to the information about a victim of an intrafamily offense shall have access to such information, and only to the extent necessary to facilitate an emergency transfer, change locks, or prevent an eviction due to an intrafamily offense. domestic violence. The housing provider shall ensure such confidentiality by the following:

(1a) The provider shall not disclose a victim's status by any means, unless such disclosure is requested in writing by the victim, ordered by the court in an eviction proceeding, or is otherwise required by law to be produced. Any request for disclosure made by the victim shall be limited in time and purpose;

(2b) In connection with any tenant relocation pursuant to this section, the housing household information shall be kept confidential, unless that disclosure is requested by or consented to by the tenant in writing, or is otherwise required by applicable law. Only persons who require access to such information to perform the relocation shall have access to this information; and

(3e) The housing provider where the tenant originally resided shall redact all information about the tenant's new location upon release of the tenant's file, unless otherwise required by applicable law, and no information about the

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new location shall be entered into any shared computer system.

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1003 EXCEPTIONS

1003.1 The provisions of this chapter shall not apply to rental or leasing of real property used for a dwelling, if the following conditions exist:

- (a) The owner or a member of the owner's family resides on the property in question; and
- (b) No more than one (1) family resides independently on the property with the owner, but in a separate living unit; or
- (c) The owner or a member of the owner's family resides on the property with five (5) or fewer families, and the owner or the owner's family member shares a kitchen or bathroom with a residing family.

1003.2 The provisions regarding familial status in this chapter shall not apply to housing intended for, and solely occupied by, persons sixty-two (62) years of age or older.

1003.3 The prohibition regarding housing for older persons does not apply to housing intended and operated for occupancy by at least one (1) person fifty-five (55) years of age or older per unit; provided, that at least eighty percent (80%) of the units in the housing facility shall be occupied by at least one (1) person fifty-five (55) years of age or older.

1003.4 Nothing in this chapter shall be construed to prohibit any private or government supported educational institution, hospital, nursing home, homeless shelter, youth correctional institution, or other organization, with a *bona fide* business or programmatic necessity to so

do, from limiting occupancy or use of a dwelling on the basis of sex or age. Nothing in this chapter shall require any such program or activity to include any individual in any program or activity without taking into consideration that individual's sex in those certain instances where sex is a bona fide occupational qualification or programmatic factor reasonably necessary to the normal or safe operation of that particular program of activity.

1003.5 Nothing in this chapter shall prohibit a religious or political organization, or any organization operated for charitable or educational purposes, which is operated, supervised, or controlled by or in connection with a religious organization, from limiting the sale or rental of housing accommodations to persons of the same religion, or from giving preference to persons of the same religion.

1003.6 Nothing in this chapter shall prohibit a person engaged in the business of furnishing

appraisals of residential real property from taking into consideration factors other than race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, source of income, status as a victim of an intrafamily offense, or place of residence or business of any individual.

1003.7 Nothing in this chapter shall prohibit discrimination against a person because the person has been convicted under federal law of the illegal manufacture or distribution of a controlled substance as defined in 21 U.S.C. § 802(6) or under similar state law.

1004 RESPONSIBILITIES OF THE DIRECTOR

1004.1 The Director shall have the following responsibilities:

- (a) Advise the Mayor with respect to the preparation of plans, procedures, regulations, and other matters pertaining to the provisions of this chapter;
- (b) Establish a system for periodically evaluating the effectiveness of the District government's overall housing and eviction program and, when appropriate, report to the Mayor with recommendations for any improvement or correction needed, including remedial or disciplinary action with respect to housing providers and landlords who have failed to carry out the provisions of this chapter;
- (c) Recommend changes in policy, practices, and procedures designed to eliminate discriminatory practices in housing and to improve the Mayor's program for eliminating such discrimination;
- (d) Prepare any reports in connection with this chapter as may be required by the Mayor; and
- (e) Receive and investigate complaints of alleged discrimination from tenants or buyers who contend that they have been discriminated against in connection with any aspect of an intrafamily offense or other unlawful discrimination under the Act.

1099 DEFINITIONS

1099.1 When used in this chapter, the following terms and phrases shall have the meaning ascribed:

Actual and/or imminent threat - a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation. In determining whether an imminent threat exists, an individualized inquiry shall be made that

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considers the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk. An actual and imminent threat consists of physical danger that is not hypothetical, remote, or speculative; is extremely likely to happen in the event immediate action is not taken to remove the victim from the premises; and could result in death or serious bodily harm. An actual and imminent threat cannot be based solely upon a prior incident; however, prior incidents may be used as evidence bearing on whether there is a real physical danger of immediate injury.

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Bifurcation - with respect to a ~~any private/public housing or Housing Choice Voucher Section 8~~ lease, and irrespective of any state or local law to the contrary, to divide a lease as a matter of law, such that certain tenants can be evicted or removed, while the remaining family members' lease and occupancy rights are allowed to remain intact.

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Commercial space - any building, structure, or designated portion thereof which is occupied as, or designed or intended for, occupancy as an accommodation for business activity, and any vacant land which is offered for sale or lease for the construction or location thereon of any building, structure, or portion of the building or structure.

Day - calendar day, unless otherwise specified.

Denial letter - the letter provided to an applicant for housing when the application is rejected.

~~**Dating violence** - violence committed by a person:~~

- (a) ~~Who is or has been in a social relationship of a romantic or intimate nature with the victim; and~~
- (b) ~~Where the existence of such a relationship shall be determined based on a consideration of the following factors:~~
 - (1) ~~The length of the relationship;~~
 - (2) ~~The type of relationship; and~~
 - (3) ~~The frequency of interaction between the persons involved in the relationship.~~

Director - the Director of the Office of Human Rights.

~~**Domestic violence** - includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim; by a person with whom the victim shares a child in common; by a person who is cohabitating with or has cohabitated with the victim as a spouse; by a person similarly situated to a spouse of the victim under the Act and other~~

~~local domestic or family violence laws; or by any other person against an adult or youth victim who is protected from that person's acts under the Act or other local domestic or family violence laws.~~

Dwelling - any building, structure, or portion of the building or structure, including a house or apartment, which is occupied, or designed or intended for occupancy, as a residence by one (1) or more families or business entities, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

Eviction notice - all notice, informal or formal, provided to a tenant by ~~an owner, a landlord, or an agent acting on behalf of an owner or landlord~~ ~~Public Housing Authority, Section 8 owner, private landlord, or management agent participating in the Housing Choice Voucher Program,~~ advising the tenant that it proposes to terminate the lease and/or that the lease is terminated.

Familial status - has the same meaning as provided in section 102(11A) of the Act (D.C. Official Code § 2-1401.02(11A)).

Family - a single individual or two (2) or more related or unrelated persons who share a dwelling.

Family member - has the same meaning as provided in section 102(11B) of the Act (D.C. Official Code § 2-1401.02(11B)).

Intrafamily offense ~~— means interpersonal, intimate partner, or intrafamily violence, has the same meaning as provided in section § 16-1001 of the Act 102(14A) of the Act (D.C. Official Code § 16-1001-1401.02(14A)), an act punishable as a criminal offense that is committed, or threatened to be committed, by an offender upon a person to whom the offender is related by blood, adoption, legal custody, marriage, or domestic partnership, or with whom the offender has a child in common.~~

Housing provider - a landlord, an owner, lessor, sublessor, assignee, or his or her agent, or any other person receiving or entitled to receive rents or benefits for the use or occupancy of any rental unit within a housing accommodation within the District.

Notice of termination - the notice provided to a tenant that a Public Housing Authority intends to terminate federal housing benefits.

Owner - has the same meaning as provided in section 102(20) of the Act (D.C. Official Code § 2-1401.02(20)).

Owner's family - the owner's spouse and children; the spouse's children, if by a marriage not to the owner; and the parents of the owner and of the owner's spouse.

Person - has the same meaning as provided in section 102(21) of the Act (D.C. Official Code § 2-1401.02(21)).

Prohibited basis - discrimination based on any one (1) or all of the following: race, color,

religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, source of income, status as a victim of an intrafamily offense, or place of residence or business.

Real property - land and, generally, that which is erected or affixed to the land, including condominiums and cooperatives.

Restrictive covenant - any written statement in a deed or other document related to the transfer of an interest in real property, purporting to limit transfer, sale, or rental on the basis of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, matriculation, political affiliation, physical handicap, source of income, status as a victim of an intrafamily offense, and place of residence or business of any individual.

Sale - a transaction in real property where there is a transfer of ownership of, and title to, real property from one person to another for consideration.

Housing Choice Voucher - the monetary assistance provided to an owner of a housing accommodation under section 8 of the United States Housing Act of 1937, approved August 22, 1974 (88 Stat. 662; 42 U.S.C. § 1437f (year)), either directly or through a tenant.

Recertification: The periodic procedure used to assess a tenant's eligibility for subsidized housing.

Sexual assault - any conduct prescribed by chapter 109A of Title 18 of the United States Code (18 U.S.C. §§ 2241, *et seq.*), whether or not the conduct occurs in the special maritime and territorial jurisdiction of the United States or in a federal prison, and includes both assaults committed by offenders who are strangers to the victim and assaults committed by offenders who are known or related by blood or marriage to the victim.

Source of income - has the same meaning as provided in section 102(29) of the Act (D.C. Official Code § 2-1401.02(29)(2001).

Subsidy Provider: Entities that provide and/or administer housing subsidies funded by the federal government or the District of Columbia.

Stalking - has the same following meaning as provided in D.C. Official Code § 22-3133:

- (a) To follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate; or
- (b) To place under surveillance with the intent to kill, injure, harass, or intimidate another person; and
- (c) In the course of, or as a result of, such following, pursuit, surveillance, or

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~~repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to:~~

- (1) ~~That person;~~
- (2) ~~A member of the immediate family of that person; or~~
- (3) ~~The spouse or intimate partner of that person.~~ **Termination of Assistance:
Termination of a tenant's housing subsidy.**

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To rent - leasing, subleasing, letting, or otherwise granting for consideration the right to occupy a dwelling not owned by the occupant.

Transaction in real property - has the same meaning as found in § 102 of the Act (D.C. Official Code § 2-1401.02(30)(2001).

Persons desiring to comment on these proposed rules should submit comments in writing to the Office of Human Rights, Office of the General Counsel, 441 4th Street, N.W., Suite 570N, Washington, D.C. 20001, no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of these proposed rules may be obtained between 8:30 a.m. and 5:00 p.m. at the address stated above.