

## CHAPTER 6

### CLAIMS OF VESTED RIGHTS

#### **6000. Scope of Regulations**

Any person claiming a vested right to be exempted from the permit requirements of Chapter 5 of these regulations must substantiate the claim in a proceeding under this Chapter. In such a proceeding, the person seeking the vested right shall have the burden of proof.

[6000 Amended 8/12/82; Effective 9/3/82]

[Chapter 6 Adopted 7/26/79; Effective 8/3/79]

## SUBCHAPTER A

### PROCEDURES

#### **6001. Obligation to File**

Any person who claims a vested rights to be exempt from the permit requirements of Chapter 5 of these regulations must file a claim of vested rights with the Board and obtain approval under this Chapter.

[Amended 8/12/82; Effective 9/3/82]

[Chapter 6 Adopted 7/26/79; Effective 8/3/79]

#### **6002. Claim Forms**

Claim of vested right forms shall be approved by the Board. Any person claiming a vested right under this Chapter must do so on the form approved by the Board. A claim of vested rights shall be filed only after the claimant has provided all the information called for by the form.

[Chapter 6 Adopted 7/26/79; Effective 8/3/79]

#### **6003. Determination**

As soon as practicable after the filing of a claim, and in no event later than 45 days from the date of filing, the Board shall hold a hearing as hereinafter provided to determine whether to grant or deny the claim of exemption.

[Chapter 6 Adopted 7/26/79; Effective 8/3/79]

#### **6004. Notice of Hearing**

At least ten days prior to the hearing, notice shall be mailed to claimant, and to any residents of the property for which the claim of vested rights is sought, of the date and time of the hearing. The notice shall be provided on a form approved by the Board.

[Chapter 6 Adopted 7/26/79; Effective 8/3/79]

**6004A. Continuances**

Continuances for any hearing conducted under this Chapter shall be granted only for good cause by a majority of the Board or by the Administrator. Requests for continuances shall be made as soon as possible. A written request and the reasons for it must be received by the Rent Control Board at least 72 hours prior to the scheduled hearing, unless good cause is shown for a later request. The written request must contain acceptable alternative dates and an explanation of what efforts were made to ascertain the position of the other parties regarding the request for a continuance. Copies of this written request must be sent immediately to all other parties and proof of such service must accompany the written request filed with the Board.

[6004A Adopted 5/1/80; Effective 5/8/80]

[Amended 7/17/82; Effective 7/28/82]

[Chapter 6 Adopted 7/26/79; Effective 8/3/79]

**6005. Staff Report**

At least ten days prior to the hearing, a staff report shall be prepared on the claim of vested rights. The staff report shall contain a written recommendation as to whether to grant or deny the claim of vested rights and all pertinent facts upon which the recommendation is based. The staff report will be available for public inspection at the office of the Board.

[Chapter 6 Adopted 7/26/79; Effective 8/3/79]

**6006. Conduct of Hearing**

The Board's public hearing on a claim of vested right shall be conducted in a manner deemed most suitable to ensure fundamental fairness to all parties concerned, and with a view toward securing all relevant information and material necessary to render a decision without unnecessary delay.

[Chapter 6 Adopted 7/26/79; Effective 8/3/79]

**6007. Evidence Rules**

The hearing need not be conducted according to technical rules of evidence and witnesses. Any relevant evidence shall be considered if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Unduly repetitious or irrelevant evidence shall be excluded upon order by the chairperson.

[Chapter 6 Adopted 7/26/79; Effective 8/3/79]

**6008. Order of Proceedings**

- (a) The Board's public hearing on a claim of vested rights shall ordinarily proceed in the following order:
  - (1) Staff Report.
  - (2) Presentation by or on behalf of applicant, if the applicant wishes to expand upon material contained in the claim of vested rights form.

- (3) Other speakers for the application.
  - (4) Speakers against the application.
  - (5) Rebuttal by the claimant.
  - (6) Motion to close the public hearing (or to continue it to a subsequent meeting).
- (b) Questions by Commissioners will be in order at any time following a speaker's presentation.

[Chapter 6 Adopted 7/26/79; Effective 8/3/79]

**6009. Speaker's Presentation**

Each speaker's presentation shall be to the point and shall be as brief as possible; visual and other materials may be used as appropriate. The Board may establish reasonable time limits for presentations, which time limits will be made known prior to any hearing. The Board encourages any interested person to submit written evidence and communication prior to the date of the hearing.

[Chapter 6 Adopted 7/26/79; Effective 8/3/79]

**6010. Board Action**

If the Board finds that a claim of vested rights is substantiated, it shall grant the claim. Three affirmative votes are necessary to grant the claim of vested rights. In the event that three affirmative votes are not obtained, the claim of vested rights shall be denied.

[Chapter 6 Adopted 7/26/79; Effective 8/3/79]

**6011. Findings**

All decisions of the Board shall be supported by written findings. If the Board adopts the staff recommendation, the staff recommendation shall constitute the findings of the Board unless the Board determines otherwise. If the Board rejects the staff recommendation, the Board may adopt its findings at the next subsequent meeting of the Board.

[6011 Adopted 7/26/79; Effective 8/3/79]

**6012. Effect of Granting Claim of Vested Rights**

If the Board grants the claim of vested rights, Chapter 5 of these regulations is not applicable, and the claimant may proceed to evict tenants pursuant to §1806(i) of the Santa Monica City Charter.

[6012 Adopted 7/26/79; Effective 8/3/79]

## SUBCHAPTER B

### STANDARDS FOR DECISION

#### **6013. Basic Test**

In order to secure a claim of vested rights, the claimant, prior to April 10, 1979, must have secured the last governmental approval necessary to the performance of the desired thing, and in good faith reliance thereon, must have performed substantial work or incurred substantial liabilities in furtherance thereof. No right shall vest unless all conditions precedent to obtaining all necessary governmental approvals have been satisfied as determined by the Board.

[Chapter 6 Adopted 7/26/79; Effective 8/3/79]

#### **6014. Application of Test**

- (a) Claims of vested rights will be sought by claimants who seek to remove rental units from the residential housing market by demolition, conversion or other means. Subsequent to April 10, 1979, the Santa Monica City Charter and Santa Monica City Ordinances require a permit from the Board in order to remove a controlled rental unit from the residential rental market. Under applicable law, such a requirement cannot be applied to persons who, prior to the adoption of Article XVIII of the Santa Monica City Charter, obtained a vested right to complete a development that included the removal of an otherwise controlled rental unit from the residential rental market.
- (b) In determining claims of vested rights, the Board will consider the following:
- (1) Prior to April 10, 1979, did the claimant obtain the final governmental approval necessary to remove the controlled rental unit from the housing market. If not, no claim of vested rights can be granted.
  - (2) Prior to April 10, 1979, did the claimant perform substantial work or incur substantial liabilities in reliance on the final governmental approval. If not, no claim of vested rights can be granted.
  - (3) Did the claimant perform the substantial work or incur the substantial liabilities in good faith reliance on the final governmental approval. If not, no claim of vested rights can be granted.

[6014(a) Amended 8/12/82; Effective 9/3/82]

[Chapter 6 Adopted 7/26/79; Effective 8/3/79]

#### **6015. Condominium Conversion**

In the City of Santa Monica, tentative subdivision map approval is usually given by the Planning Commission. Since the City Council does not generally approve tentative subdivision maps, it retains discretionary power to disapprove final subdivision maps when they come to the City Council for approval. Based upon the subdivision process in the City of Santa Monica, California vested rights decisions, and the intent of the Santa Monica Rent Control Charter Amendment, the Board will generally require that final subdivision map approval has been received prior to April 10, 1979, in order to grant a claim of vested rights for a condominium conversion. However, in each situation, the Board will engage in a detailed examination of all pertinent facts to determine if earlier vesting is appropriate as a matter of law.

**6016. Substantial Expenditures and Liabilities**

- (a) Expenses incurred or work performed prior to the issuance of the final governmental approval, and expenses incurred in obtaining such approval, including permit fees, are not deemed expenses or liabilities for work and materials incurred in reliance on the approval. Such pre-permit expenses are made in anticipation of the approval, and do not count toward obtaining a vested right.
- (b) Expenses incurred in the acquisition of the property, including all financing costs incurred in connection therewith, generally do not count toward obtaining a vested right. However, financing obtained after the final governmental approval, such as construction financing or conversion financing, may count toward obtaining a vested right.
- (c) In determining what constitutes "substantial" expenditures or liabilities, the Board shall consider:
  - (1) The nature and significance of the work performed.
  - (2) The dollar cost of the expenditures and liabilities.
  - (3) The percentage of the total project costs represented by the expenditures and liabilities.

**6200. Administrative Dismissal of Claim of Vested Right**

- (a) The Board shall dismiss a claim of vested right and shall not schedule a hearing or grant a vested right in any of the following circumstances:
  - (1) Where the property in question is not properly registered with the Board as specified in Regulation §13002;
  - (2) Where registration fees or penalty fees are due and owing;
  - (3) Where the claim form submitted has not been completed; or
  - (4) Where the Board has previously made a final administrative decision on a claim of vested right for the same property.

- (b) Prior to dismissal of a claim of vested right, Rent Control staff shall mail to the claimant a written notice of intention to dismiss stating the applicable reasons for such dismissal. The claimant shall have thirty (30) days from the date of mailing of the notice to cure the defects in the claim prior to dismissal. Rent Control staff shall be available to any claimant who needs assistance in amending a claim during that thirty (30) day period.

If a claimant amends a claim following receipt of a notice of intention to dismiss, the 45 days for the final Board decision specified in Regulation 6003 shall be tolled for the period from the date when an amended claim is accepted for filing, or for thirty (30) days, whichever is shorter.

- (c) Any of the following persons may make an administrative determination to dismiss a claim of vested right:
  - (1) A majority of the Rent Control Commissioners;
  - (2) The Administrator; or
  - (3) The Senior Attorney.

- (d) A copy of a notice of administrative determination to dismiss a claim of vested right containing the applicable reasons for dismissal shall be mailed to the parties within 30 days of the date of filing of the petition.
- (e) The claimant may appeal dismissal of a claim by the Administrator or the Senior Attorney to the Board within 10 days of the date of dismissal. However, if the Board grants the appeal, the 45 days for final Board decision specified in Regulation §6004 shall be tolled for the period from the date of dismissal to the date the Board grants the appeal, or for 30 days, whichever is shorter.

[6200 Adopted 4/23/83; Effective 5/15/83]

[6200 Amended 10/27/83; Effective 11/5/83]

[Chapter 6 Adopted 7/26/79; Effective 8/3/79]

[6200 amended 10/27/83; Effective 11/05/83]