

**D.C. OFFICE OF THE TENANT ADVOCATE  
HOSTS D.C. RENTAL HOUSING COMMISSION  
to discuss:**

**Revised Regulations  
for the Rental Housing Act  
(14 D.C.M.R. Chapters 38–44)**



(202) 719-6560 | 2000 14th Street, NW,  
300 N, Washington, DC 20009

11/17/22

# INTRODUCTION

JOEL COHN

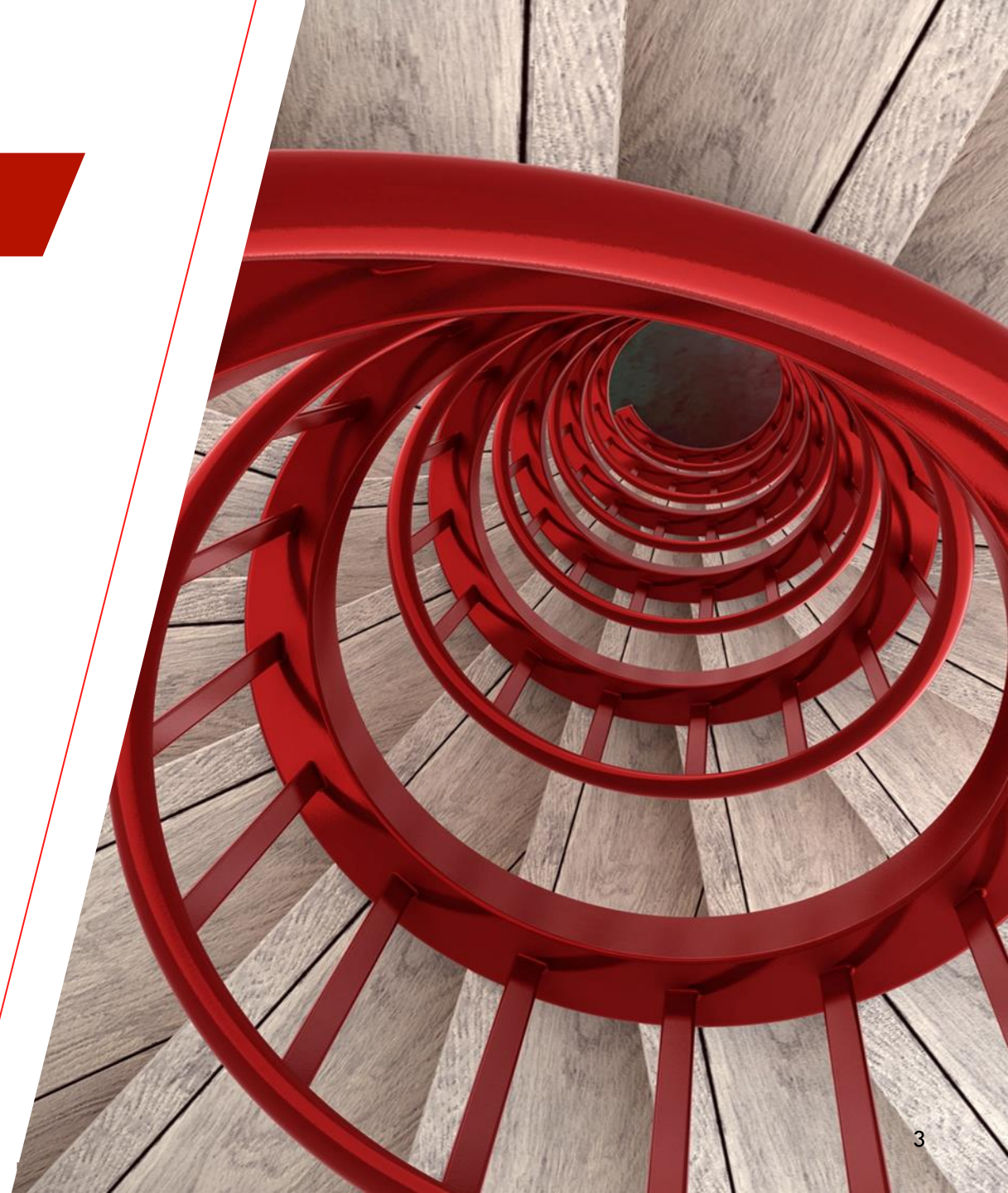
LEGISLATIVE DIRECTOR

OFFICE OF THE TENANT ADVOCATE

# LEGISLATIVE CONTEXT

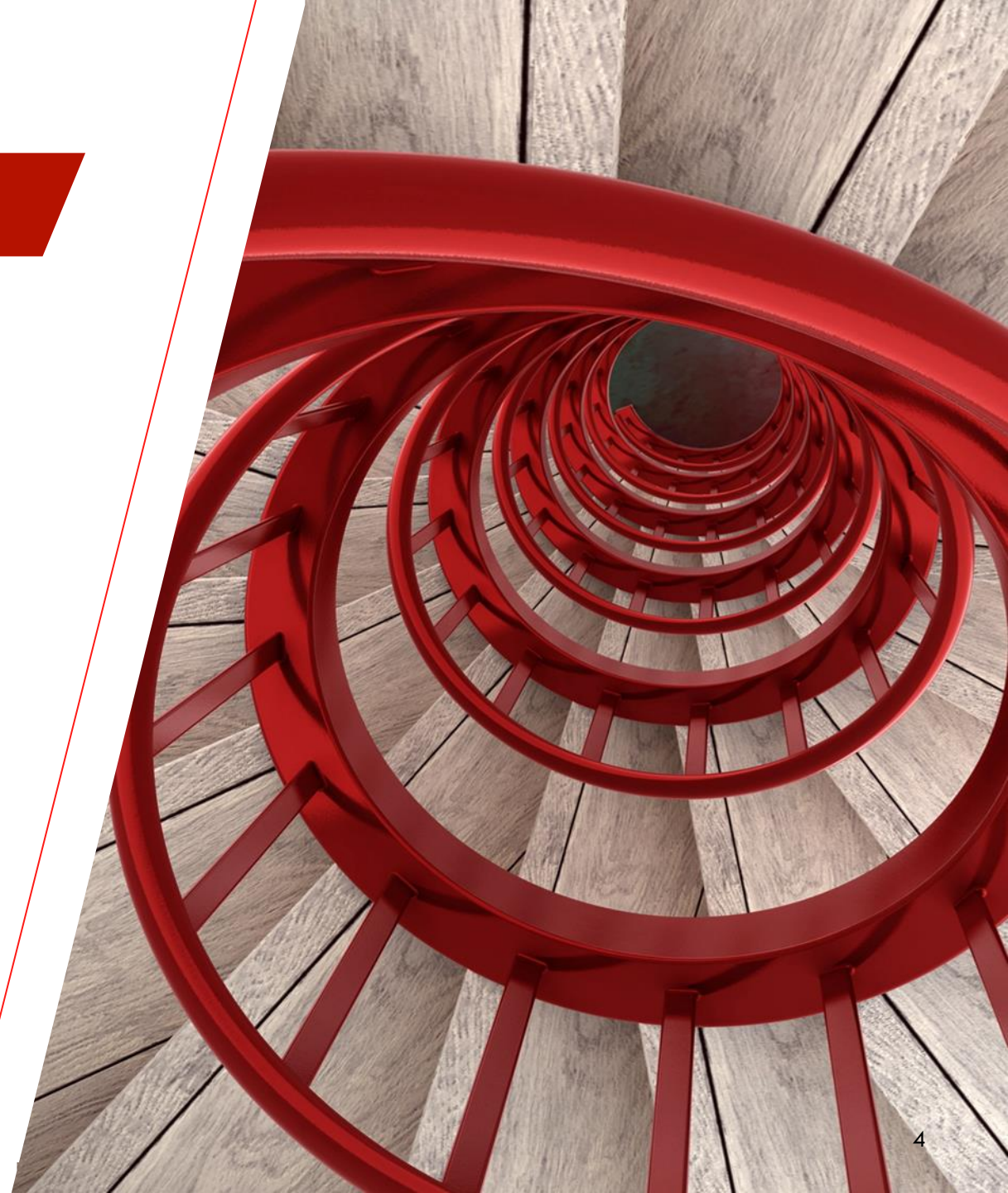
- Rental Housing Act of 1985 (“RHA”) -- DC’s key tenant protection law
- Rental Housing Commission (“RHC”) -- 2 key roles:
  - Deciding administrative appeals
  - Issuing implementing regulations for the Act, including Council amendments
- Major Council amendments to RHA since 1985”
  - 2006 – rent ceilings abolished
  - 2017 – SS COLA applied to rent increase cap for elderly and disability tenants
  - 2018 – “rent charged” definition clarified

- Law 16-145, the "Rent Control Reform Amendment Act of 2006" (eff. 8/5/2006).
- Law 21-239, the "Elderly and Tenants with Disabilities protection Amendment Act of 2015" (eff. 4/7/2017).
- Law 22-248, the "Rent Charged Definition Clarification Amendment Act of 2018" (eff. 10/2/2018).



# REGULATORY CONTEXT

- 2016 – 2018: Draft rulemaking / interagency comments & discussions
- 2019 – 2021: 3 proposed rulemakings / public comments & a public hearing
- December 3, 2021: RHC publishes Final Rulemaking in the DC Register
- December 31, 2021: Final Rulemaking takes effect
- Regulations codified at D.C.M.R. Title 14, Chapters 38 through 44
- Each notice starts with an official statement of the Commission’s reasoning, citations to case law, and discussion of significant public comments
- All documents and public comments online at <https://rhc.dc.gov>, click on “Rental Housing Act and Regulations”



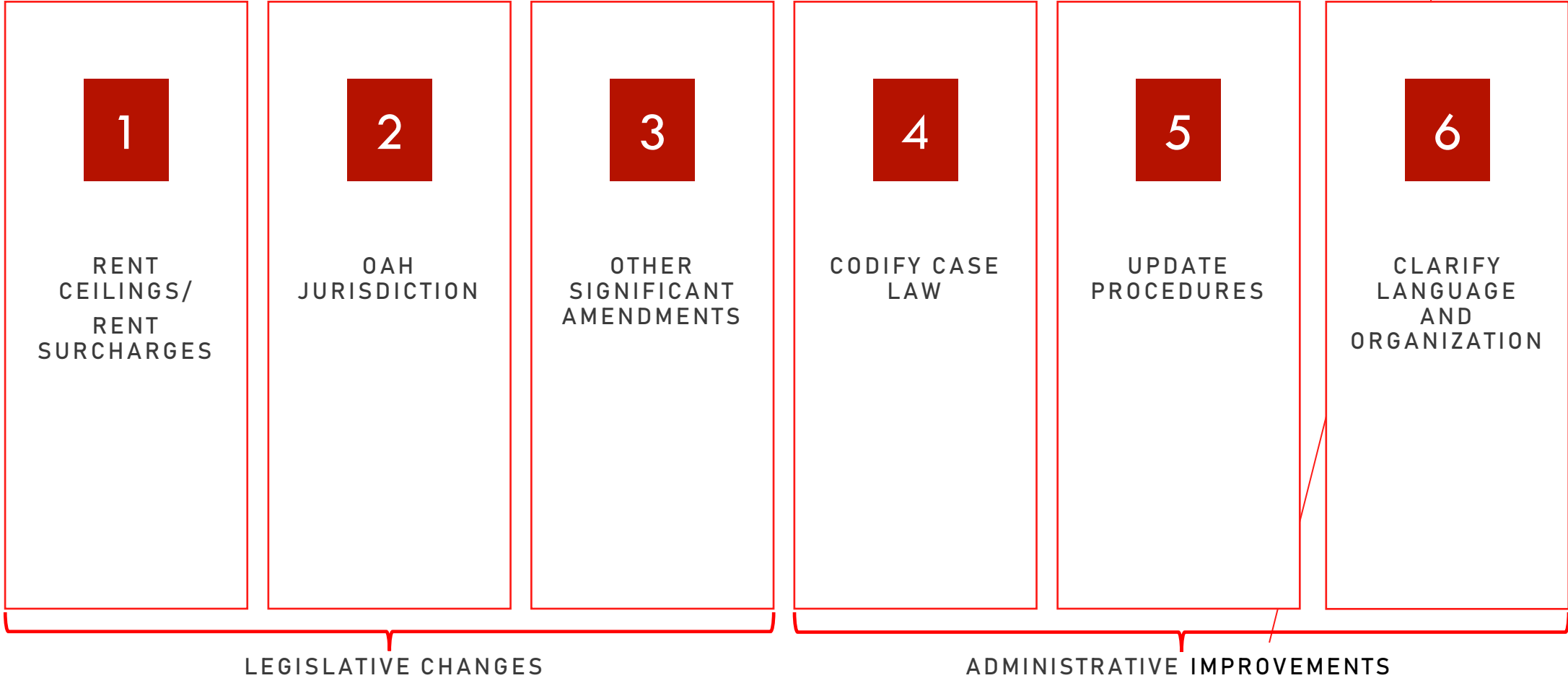
# RHC HIGHLIGHTS

DAN MAYER

GENERAL COUNSEL

RENTAL HOUSING COMMISSION

# Goals of the Rulemaking Process



# ALPHABET SOUP

RHC or “Commission” – Rental Housing Commission

RAD – Rental Accommodations Division of DHCD

DHCD – Department of Housing and Community  
Development

OAH – Office of Administrative Hearings

OTA – Office of the Tenant Advocate

HP – Hardship Petition

CI – Capital Improvement (petition)

SF – Related Services and Facilities (petition)

SR – Substantial Rehabilitation (petition)

VA – Voluntary Agreement

CPI-W – Consumer Price Index for Urban Wage Earners  
and Clerical Workers; the annual inflation-based rent  
increase

“Housing Provider” – Sometimes “HP”; typically means a  
landlord or the management company



# CATEGORIES OF KEY UPDATES

A photograph of a multi-story brick building. The building has a mix of grey and red brickwork. There are several windows with black frames and air conditioning units mounted on the sills. A black metal fire escape is attached to the side of the building, with a red glow emanating from the right side, possibly from a fire or a light effect.

“Rent Charged”

Rent Increases

Registration/Claims of Exemption

Commission Procedures

Housing Code Violations

Petitions, Generally

Hardship Petitions (HP)

Capital Improvements (CI)

Services and Facilities (SF)

Substantial Rehabilitation (SR)

Voluntary Agreements (VA)





# “RENT WHAT”?

- **Top-to-bottom rewrite of most Rent Stabilization rules**
  - Didn't make sense to just swap “charged” for “ceiling”
  - Uses include rent demanded, received, charged, surcharge, increase, decrease, adjustment, ceiling, lawful, unlawful, refund, rollback . . .
- **Generally: rules use “rent” unless a qualifier is required**
  - E.g., “rent adjustment” includes “increase” or “decrease” of “charged” or “surcharge”



# RENT INCREASES: TIMING

- **Any authorized rent adjustment must be used to increase the rent within 12 months of its approval or first eligibility.**
- **Exceptions if SF/SR/CI work delays first eligibility**
- **Vacancy adjustments only upon start of next new tenancy**



# RENT INCREASES: FORMS

- RAD Form 8: Housing Provider now must use this form (as updated) to notify tenants 30 days ahead of increase
- RAD Form 9: Housing Provider must file this form after any increase & decrease: maintains the accurate “rent charged” on file
- New tenant disclosures:
  - Packet of Forms 3, 4, & 5
  - Form 4, rent history, must show any vacancy adjustment and be filed with RAD if there is one



# HOUSING PROVIDER PETITIONS

- **“Surcharges”**: New law in 2018 defined rent increases from HP, CI, and SR petitions, plus SF and VA for protected tenants, as “surcharges” separate from the “rent charged.”
- **Process**: codify and improve what’s been done since OAH took over in 2006
  - File at RAD, transfer to OAH, OAH serves tenants with notice (current practice)
  - All petitions adjudicated by OAH; if no objecting tenants, ex parte proof hearing held
  - RAD to continue to decide vacant-unit SR (expedite where no opposition possible) & uncontested HP (audit report already done by RAD)
  - VA slightly different process



# MORE ABOUT PETITIONS

- Rewrite rules for each petition type as clear legal standards & mathematical formulas
- Codify case law about legal standards for each type of petition
- Housing Code violations:
  - Tenants can object to a petition if violations exist and are not fixed by the time of the evidentiary hearing
  - Clarify that pre-inspection not mandatory



# VOLUNTARY AGREEMENTS

- **Negotiation and filing:**
  - Removed unworkable rules about filing and serving all offers and responses
  - Must be filed with all terms and side deals listed
  - Service & 30-day waiting period; re-service if changes
  - 60-day signature collection period; re-filing
- **Eliminate 45-day automatic approval** (unless all units adjusted by same percent)
- Agreement can't be coerced or fraudulent
- Rent adjustments must be “reasonable,” balancing all relevant factors
- Council Moratorium on VAs until October 1, 2023

# HOUSING CODE VIOLATIONS

- Rewrite and clarify list of “substantial” violations using language in modern property maintenance code
- Clarify rules that substantial violations are reductions in related services
- Clarify statute of limitations:
  - Must file tenant petition within 3 years of any reduction in SF
  - Case law was conflicted: when it started, or any 3-year period
  - Housing Code: any 3-year period; no “rats for 5 years” defense
- Eliminate confusing rule about witness testimony over a year after abatement



# TENANT PETITIONS

- **Reorganize to better list possible challenges to rent increases**
- **Codify case law on statute of limitations for rent ceiling adjustments**
- **Clarify how to calculate refunds after abolition of rent ceiling system**
- **Codify case law on “knowing” (refund), “bad faith” (3x refund), and “willful” (fines) violations of act**



# REGISTRATION/CLAIMS OF EXEMPTION

- Clarify rules about exemptions, especially small landlord and co-ops/condos
- Notice to tenants: change from notice “prior to or simultaneously with” filing, give 15 days after registration number issued
- 90-day waiting period for rent increase after correcting failure to file or serve notice of exemption
- Voucher exemptions: clarify process (RAD Form 2)



# EVICCTIONS

- Reorganize all 3 sections to better-group requirements of each possible Notice to Vacate
- Content requirements for notices:
  - Clarify amount of detail required for factual basis
  - Personal use and occupancy: clarify affidavit requirements, meaning of personal use (Irene v. Rubio)
  - Certify that TOPA rights were provided, if applicable

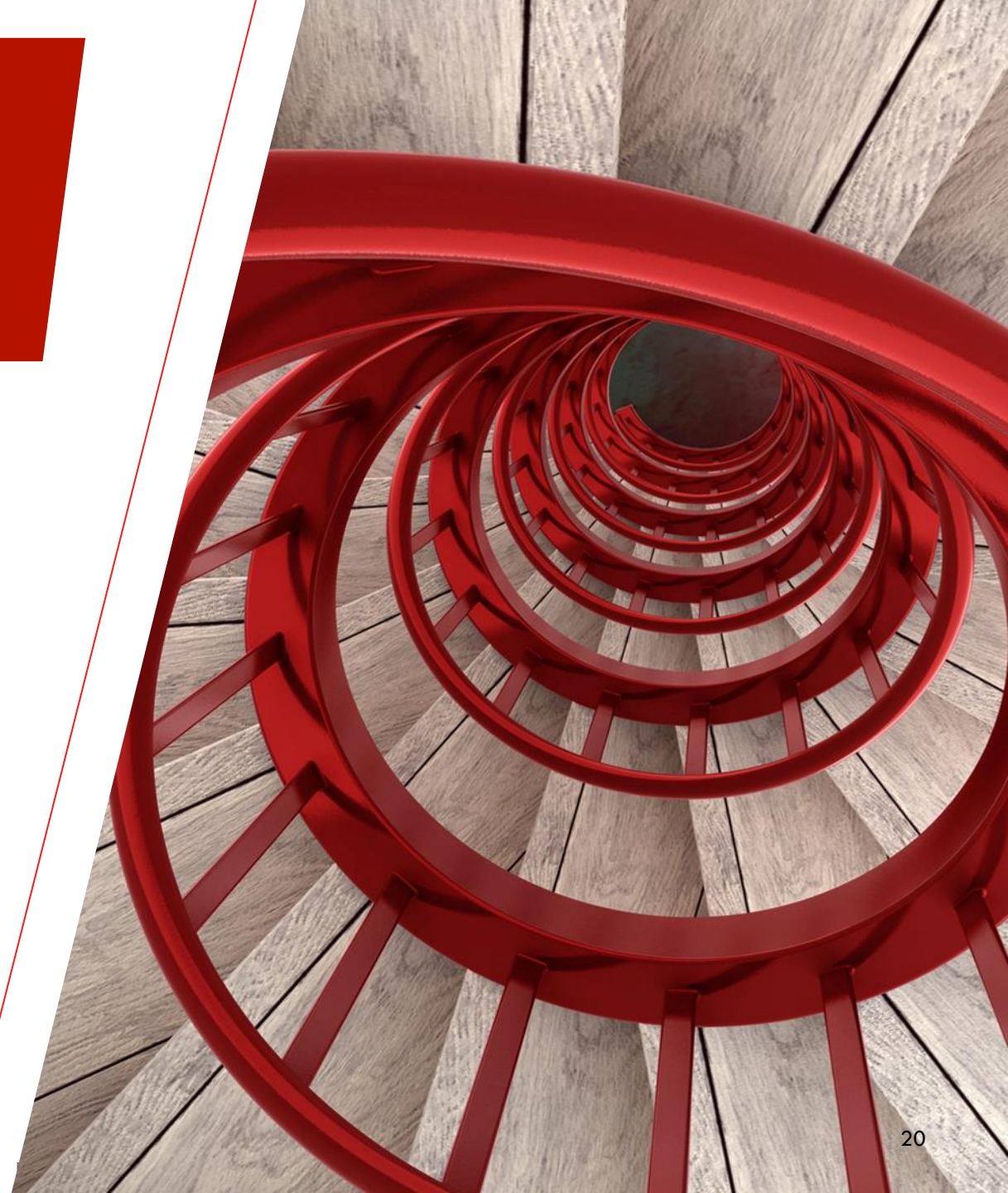
An abstract, low-poly geometric pattern in shades of red, orange, and brown, resembling a stylized leaf or a textured surface. The pattern is composed of many small, irregular polygons that create a sense of depth and movement. The colors transition from deep reds and oranges to lighter, more golden-brown tones towards the top and right edges.

# TENANT RIGHTS

- Retaliation: clarify act + intent standard
- Organizing: spell out rights, remedies
- Intrafamily offenses: victims may break lease, may file TP for refund of rent demanded if housing provider doesn't release
- Late fee restrictions

# RHC PROCEDURES

- Automatic stays of all orders on appeal to RHC (case law that some are stayed automatically; create parity by staying all)
- Rational briefing schedule
- Align rules on attorney's fees with current case law
- Allow filing and service by email
- Clarify rules of legal practice: appearances (Rule 42 and exceptions), sanctions (Rule 11)



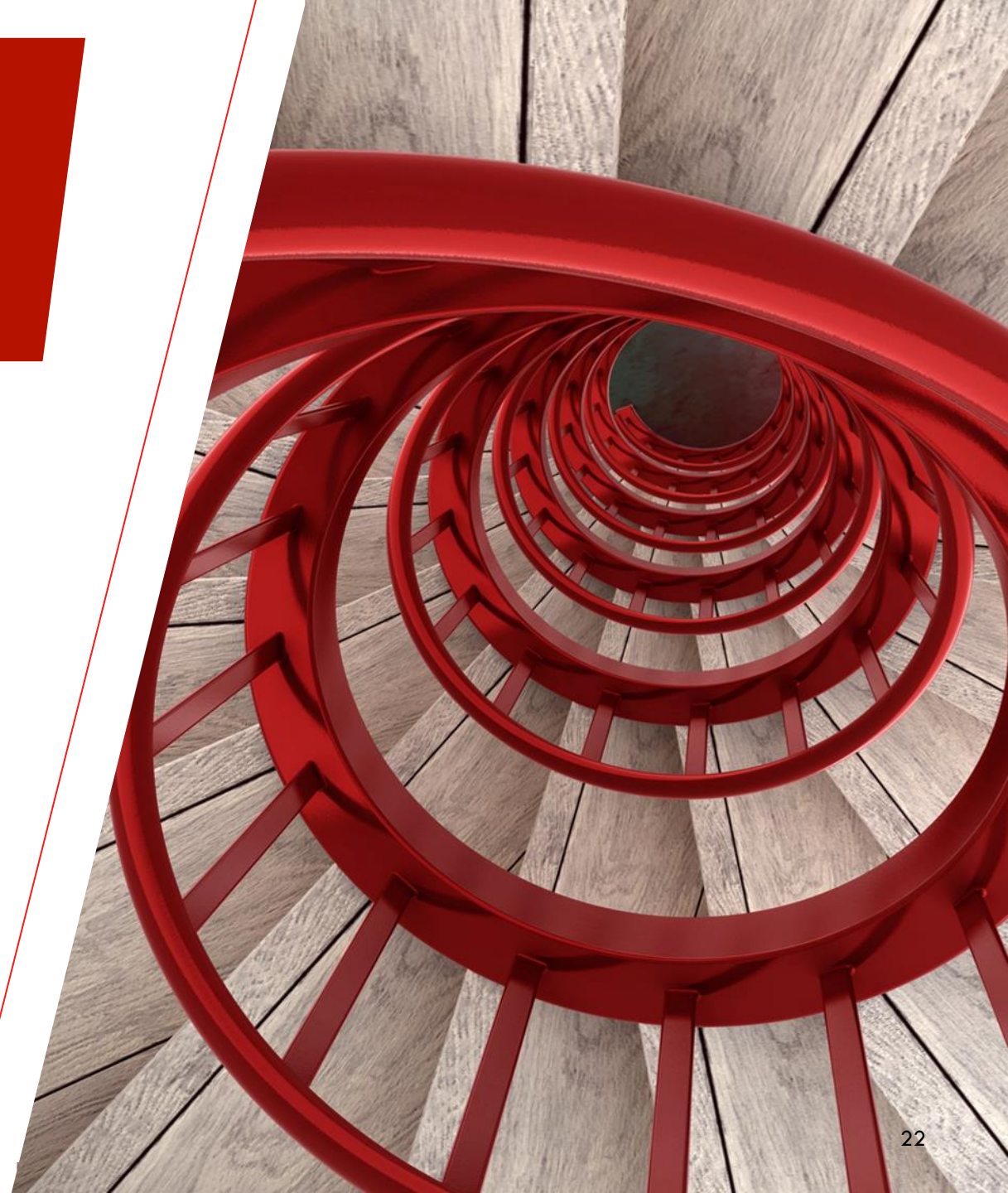
# WHAT'S NEXT? TECHNICAL FIXES

- Commission worked with RAD on developing revised forms, found a number of technical fixes
- Fixes adopted on “emergency and proposed” basis October 13, 2022
- Comments due November 21, 2022
- Stay in effect until February 10, 2023 unless further action taken



# WHAT'S NEXT? EVICTION & SCREENING

- \$600 limit for notices of nonpayment
- Notices to vacate - language access: English & Spanish or Arabic, Amharic, Chinese, French, Tagalog, or Vietnamese
- Notices to vacate - service: same as summons, personal or posting
- Tenant screening - references to FCRA obligations
- Refund of unused application fees: 14 days of payment
- Housing provider defense: non-reliance & no-fault reliance



# OTA PERSPECTIVE

JOEY TRIMBOLI

LEGISLATIVE COUNSEL

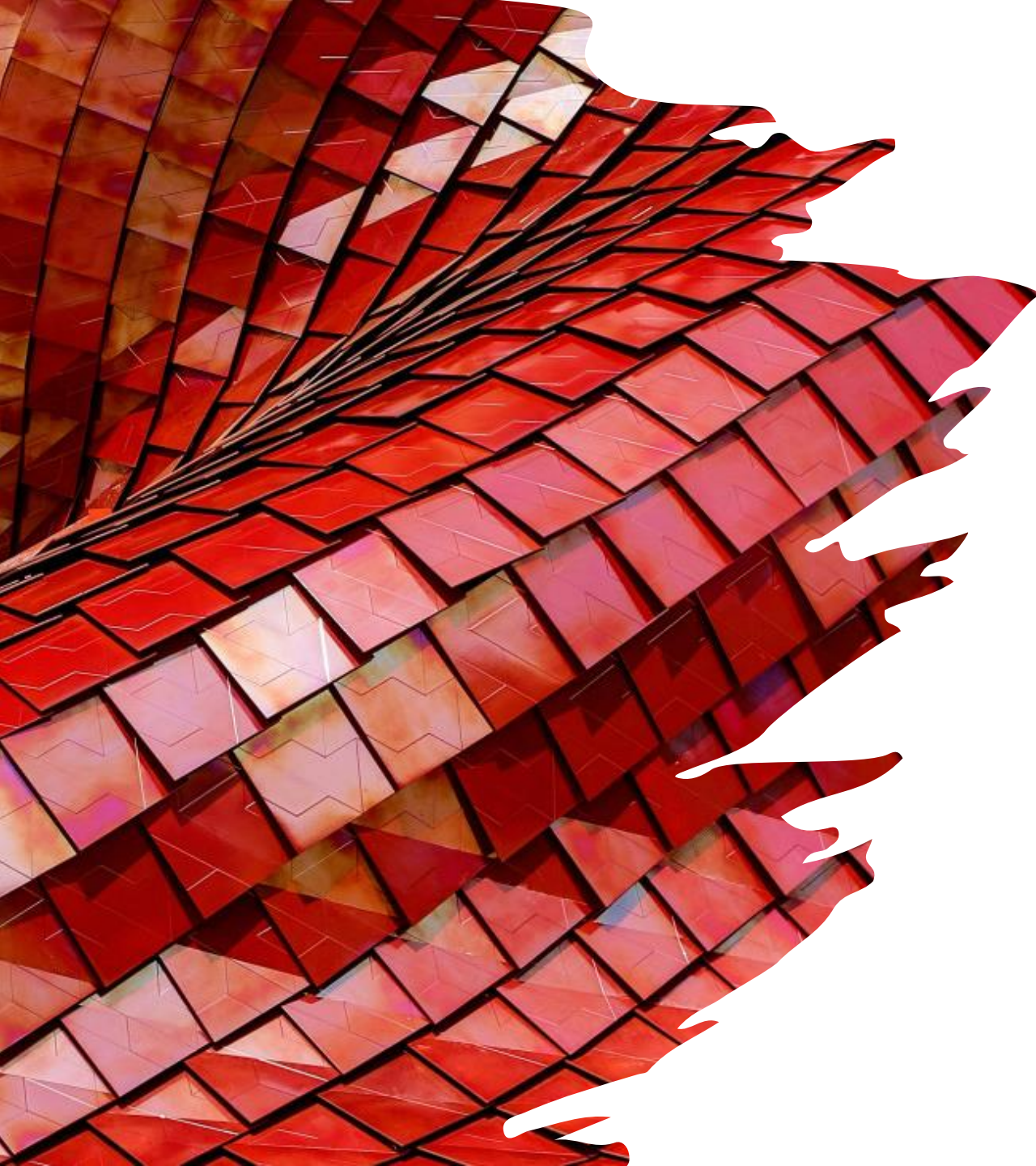
OFFICE OF THE TENANT  
ADVOCATE



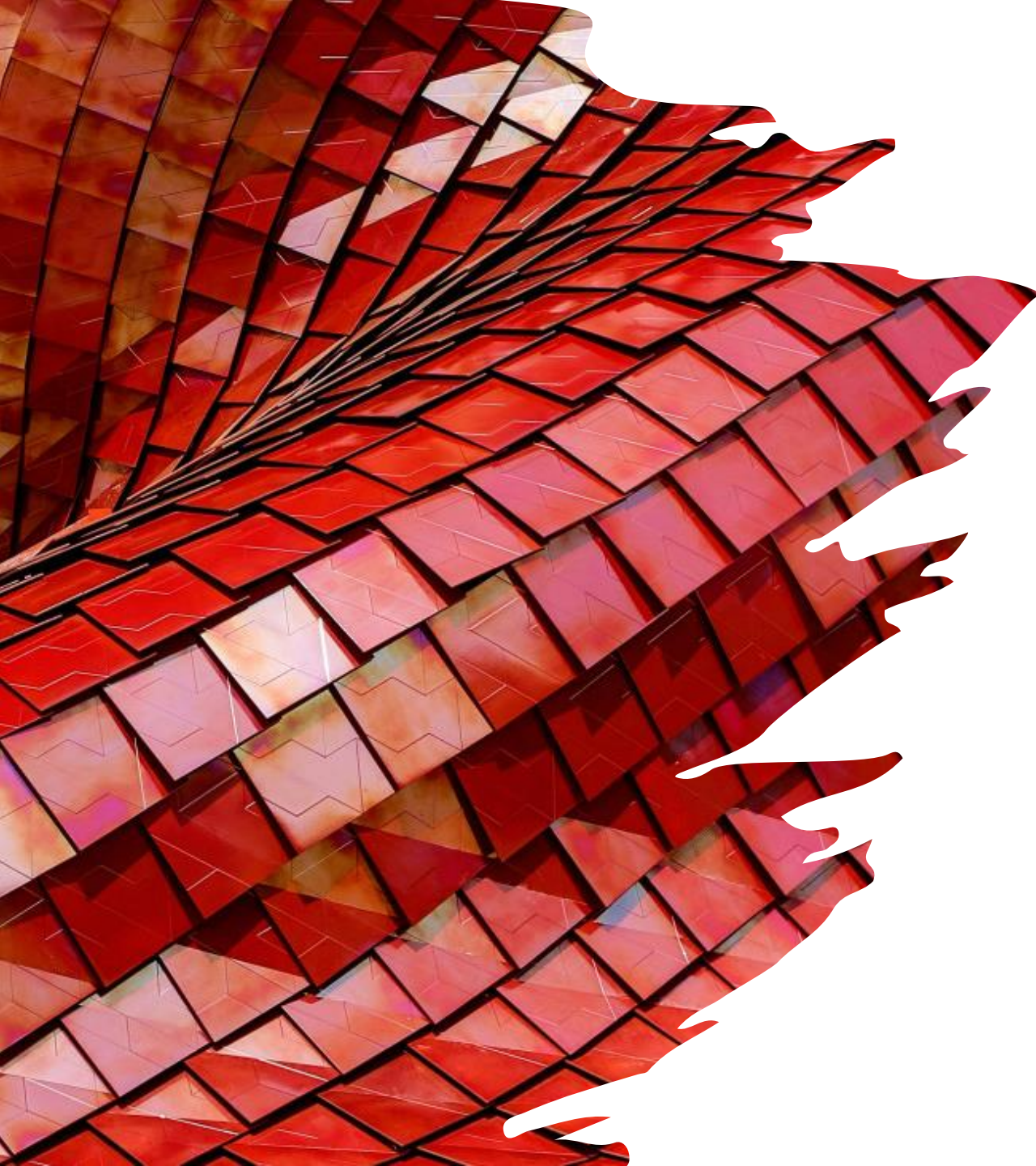
# RENT INCREASES

- **Forfeiture of rent increase after 12 months**
- **Vacancy increases**





- **Forfeiture of rent increase after 12 months:** Rent adjustments, except for vacancy adjustments, that are approved but not implemented will now expire 12 months after authorization.
- This 12-month rule exists because of the statutory requirement in the Rental Housing Act that prohibits landlords under rent control from taking more than one increase in a 12-month period.



- **Vacancy increases:**

- Landlords must file with RAD within 30 days of a unit becoming vacant in order to secure a vacancy rent increase.
- Landlords must file again within 30 days of a tenant taking occupancy after the vacancy if the tenant is charged a lower amount.



# HOUSING PROVIDER PETITIONS

- **“Surcharges”**: Rent increases pursuant to hardship, capital improvement, and substantial rehabilitation petitions, as well as voluntary agreements and services & facilities rent increases for protected tenants, are now defined as “surcharges.” This is in order to separate them from the base rent and exclude them from the calculation of standard annual increases.
- For example: If the rent for a unit is \$2,000 and there is a \$300 surcharge for a hardship petition, any rent increase will be calculated based on the \$2,000 rent, not the \$2,300 total of the rent plus the surcharge.

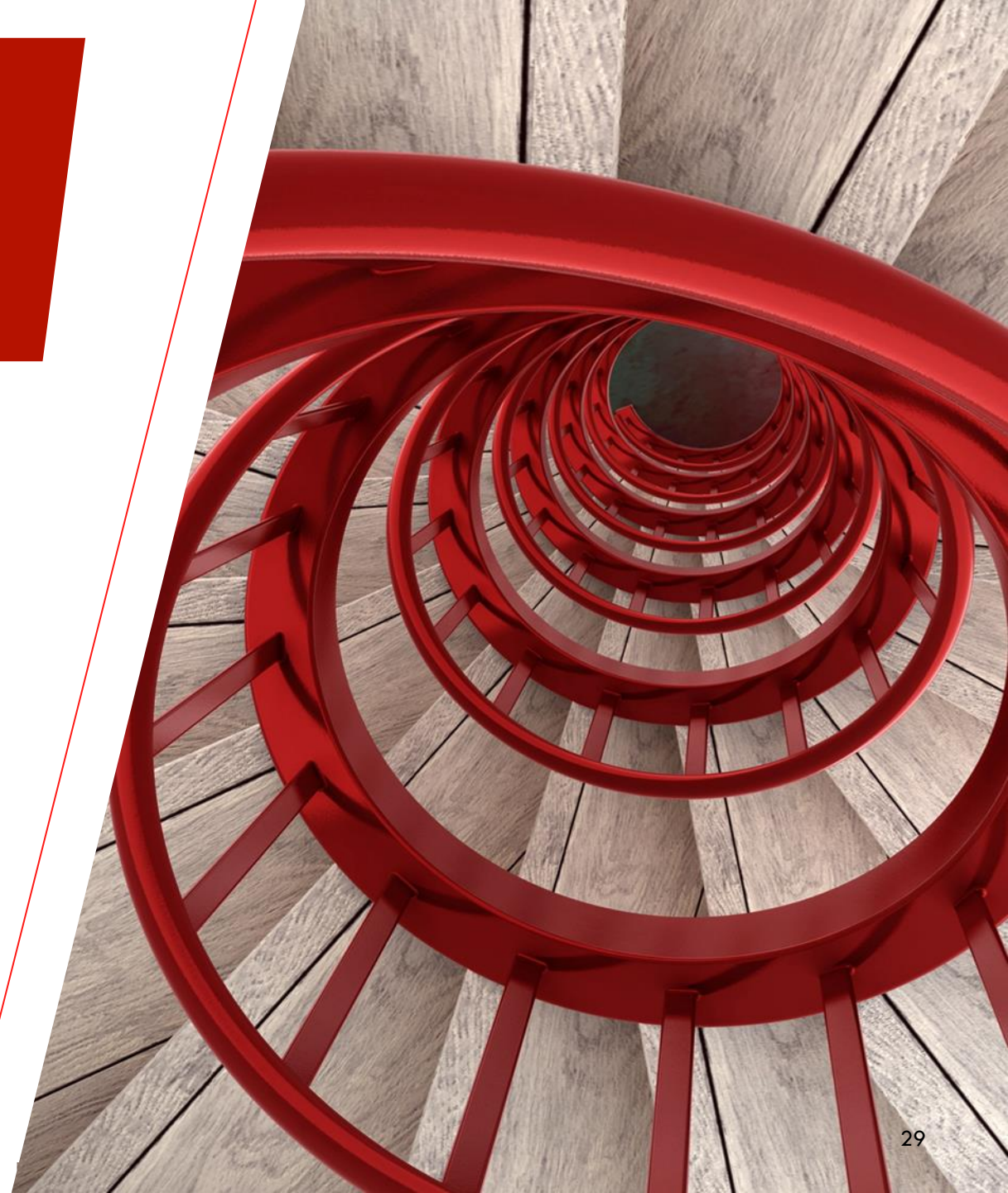
# REGISTRATION/CLAIMS OF EXEMPTION

- Landlord's failure to register / notify tenant:

If landlord fails to register the unit or apprise a new tenant of the rent control-exempt status of the unit, the rent may not be increased until 90 days ("cooling-off period") after the landlord registers the unit and the tenant receives proper notice of the rent control status.

# RENTAL HOUSING COMMISSION PROCEDURES

- **Stays of decisions appealed:** All final orders to pay a specific amount of money that are appealed to the Commission will now be automatically stayed pending appeal.
- **Final Orders Posted to Website:** The Commission will post all final orders on its website.





# HOUSING CODE VIOLATIONS

- **Substantial housing code violation examples**
- **Mold**
- **Rules of evidence**
- **Statute of limitations**



- **Substantial housing code violation examples:** The non-exhaustive list of “substantial” violations has been updated to reflect the Property Maintenance Code.
- **Mold:** A violation of the indoor mold regulations will now be a substantial housing code violation, regardless of the circumstances.



### **Rules of evidence:**

Tenants will be permitted to testify orally before OAH or the Commission regarding housing code violations that were abated more than one year prior to the hearing.



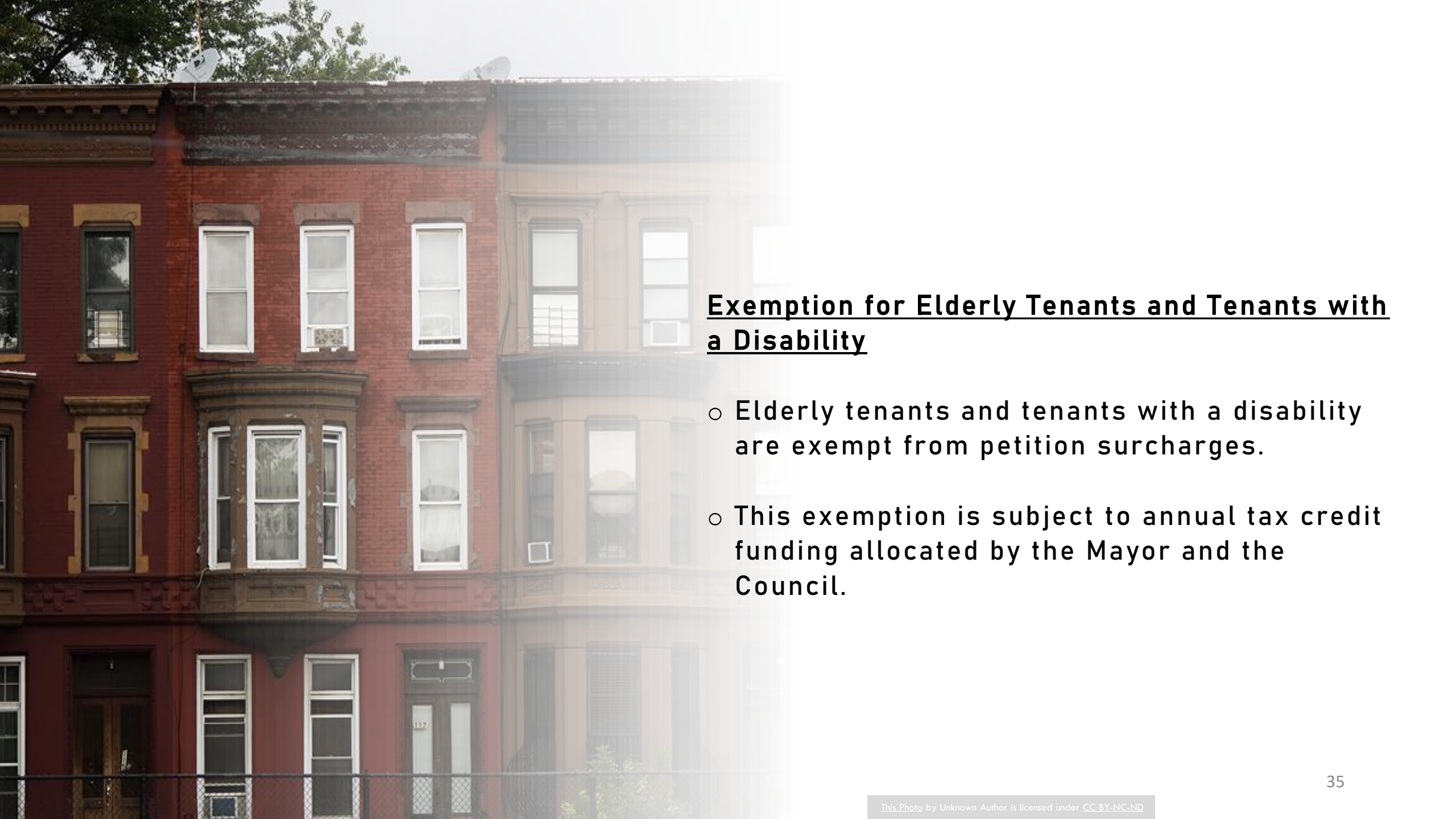


**Statute of limitations:** Where a landlord reduces the services or facilities in a building/unit, and in doing so creates a substantial violation of the Housing Code that is still ongoing, a tenant may recover a rent refund going back as far as three years – *even if the violation initially began more than three years prior (previously the SOL cut off tenant claim 3 years after the initial reduction/elimination).*



# HOUSING PROVIDER (HP) PETITIONS

- **Exemption for Elderly Tenants and Tenants with a Disability**
- **Retaliatory petitions**



## **Exemption for Elderly Tenants and Tenants with a Disability**

- Elderly tenants and tenants with a disability are exempt from petition surcharges.
- This exemption is subject to annual tax credit funding allocated by the Mayor and the Council.



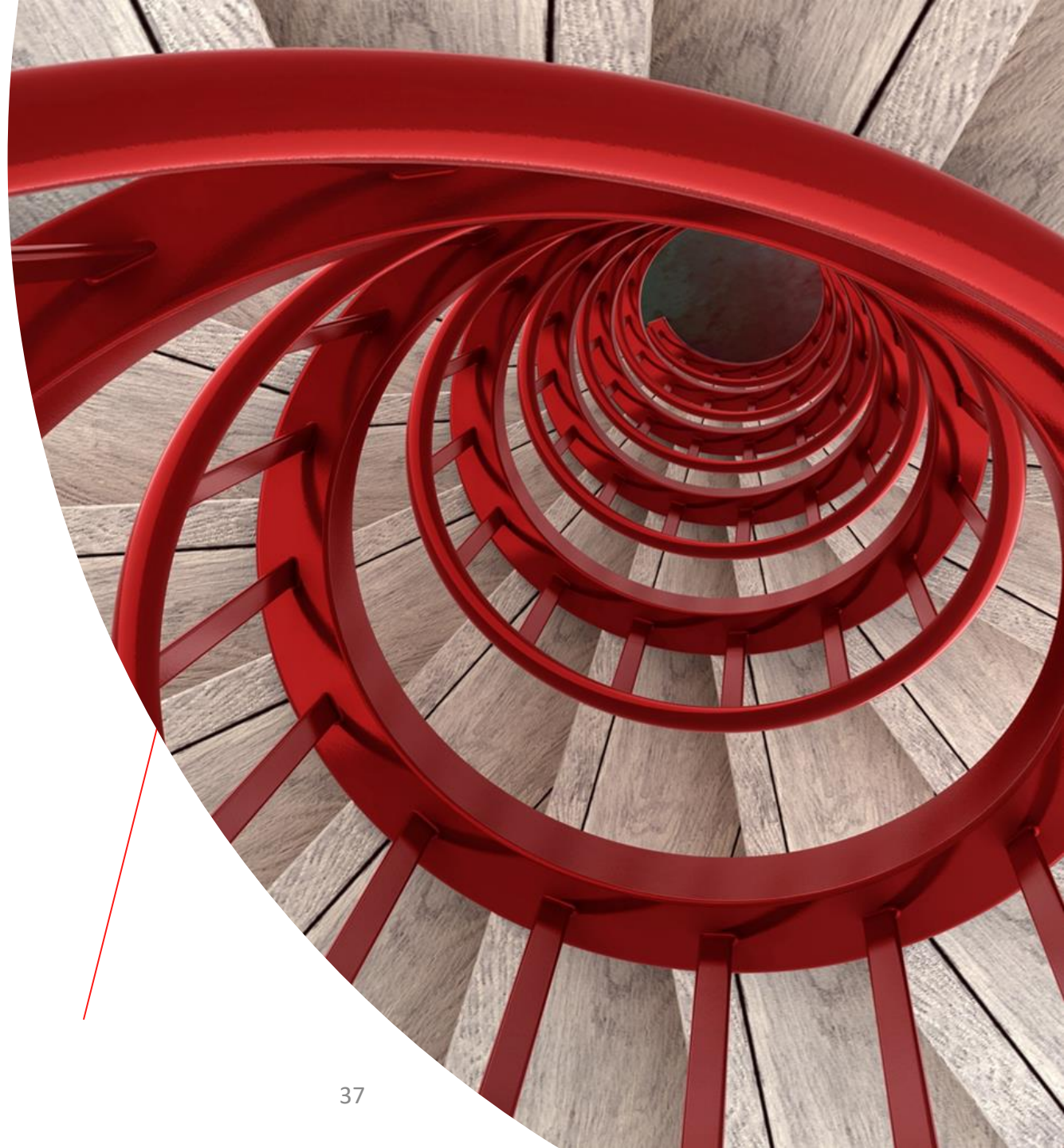
- **Retaliatory petitions**: Tenants may challenge housing provider petitions as being retaliatory under the new rules. (This previously only applied to services & facilities petitions.)

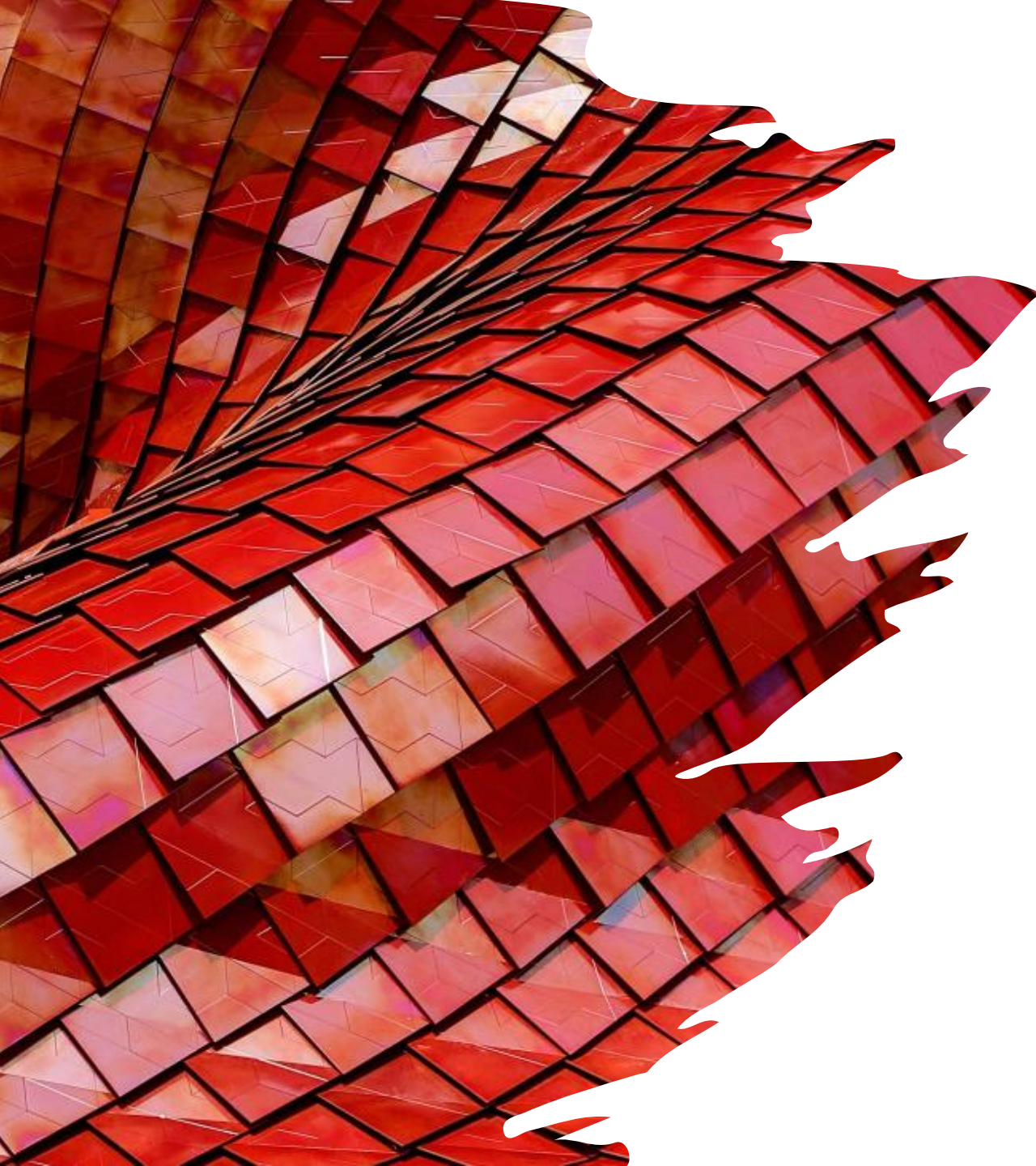
# HP PETITIONS: HARDSHIP PETITIONS

- “Maximum possible rental income”:

Where a landlord wishes to increase the rent via a hardship petition, the landlord must show its “maximum possible rental income” over the previous year. If this number is higher, then the landlord’s calculated hardship will be lower.

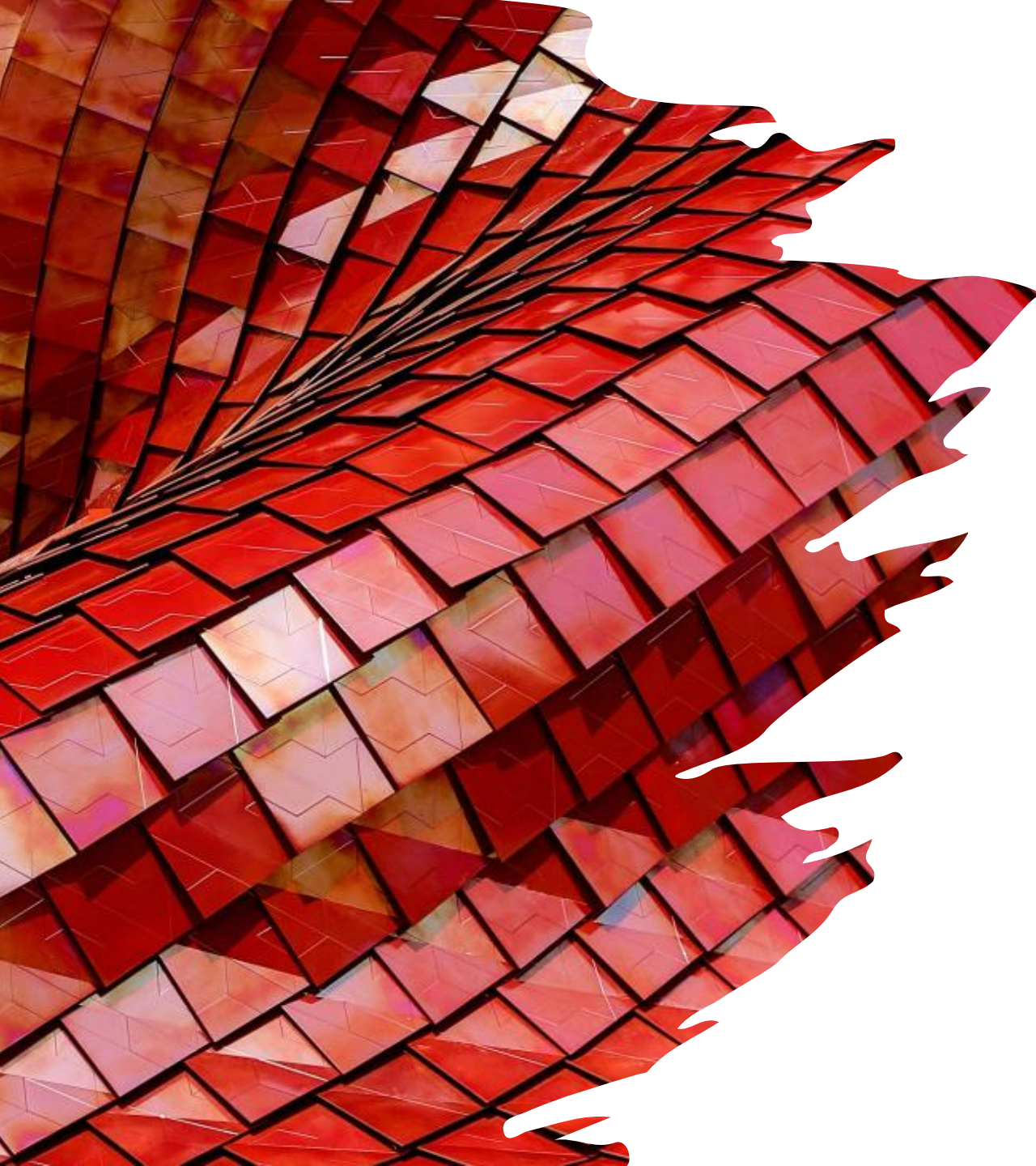
Landlords will now be required to include unimplemented rent increases in their maximum possible rental income calculations. This means they will not be able to increase rents under a hardship petition to make up for increases they chose not to implement in the past four years.



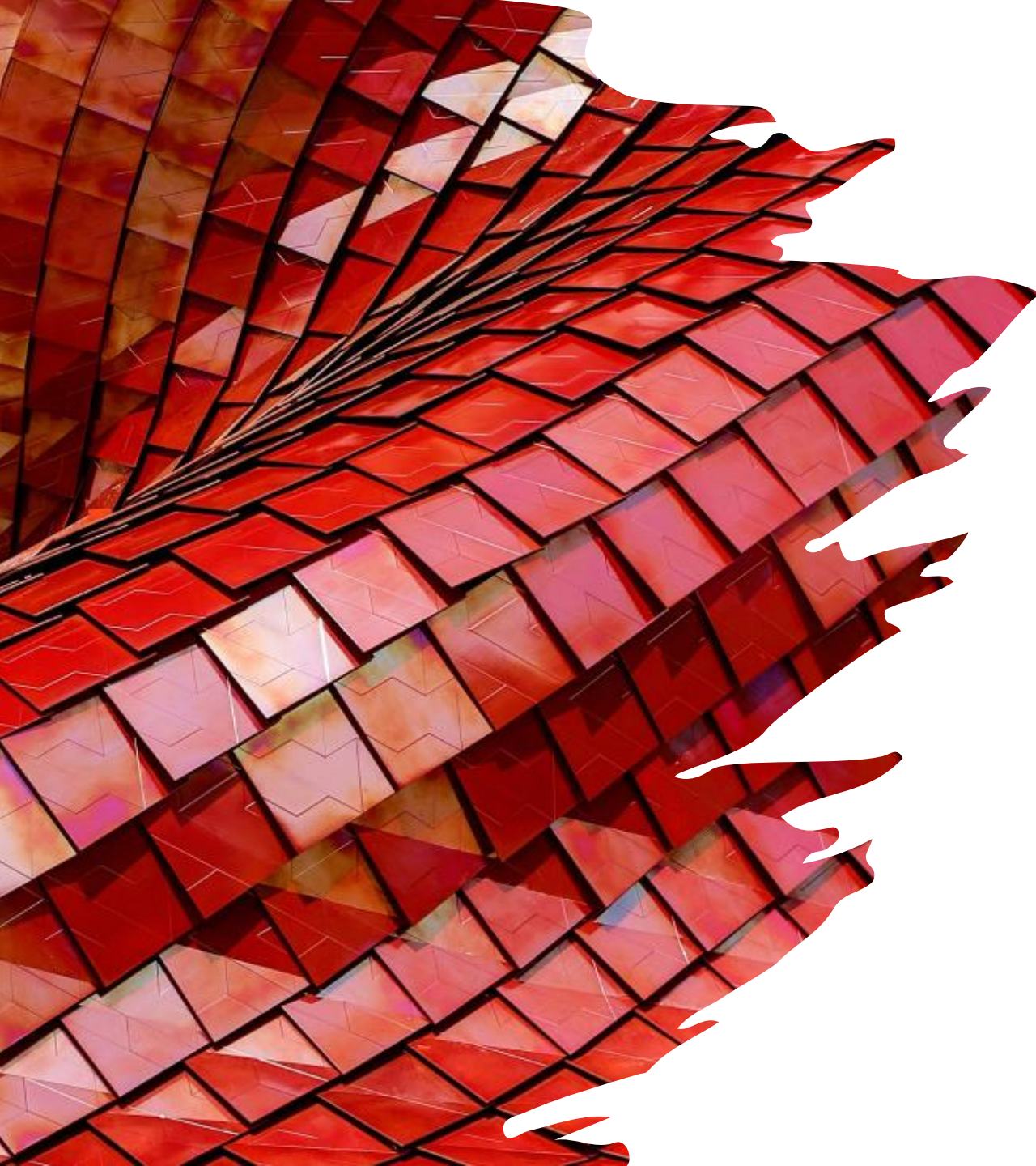


# HP PETITIONS: CAPITAL IMPROVEMENTS

- **“Selective implementation” of capital improvement surcharges**
- **Horizontal stacking**
- **Exceptions and objections**

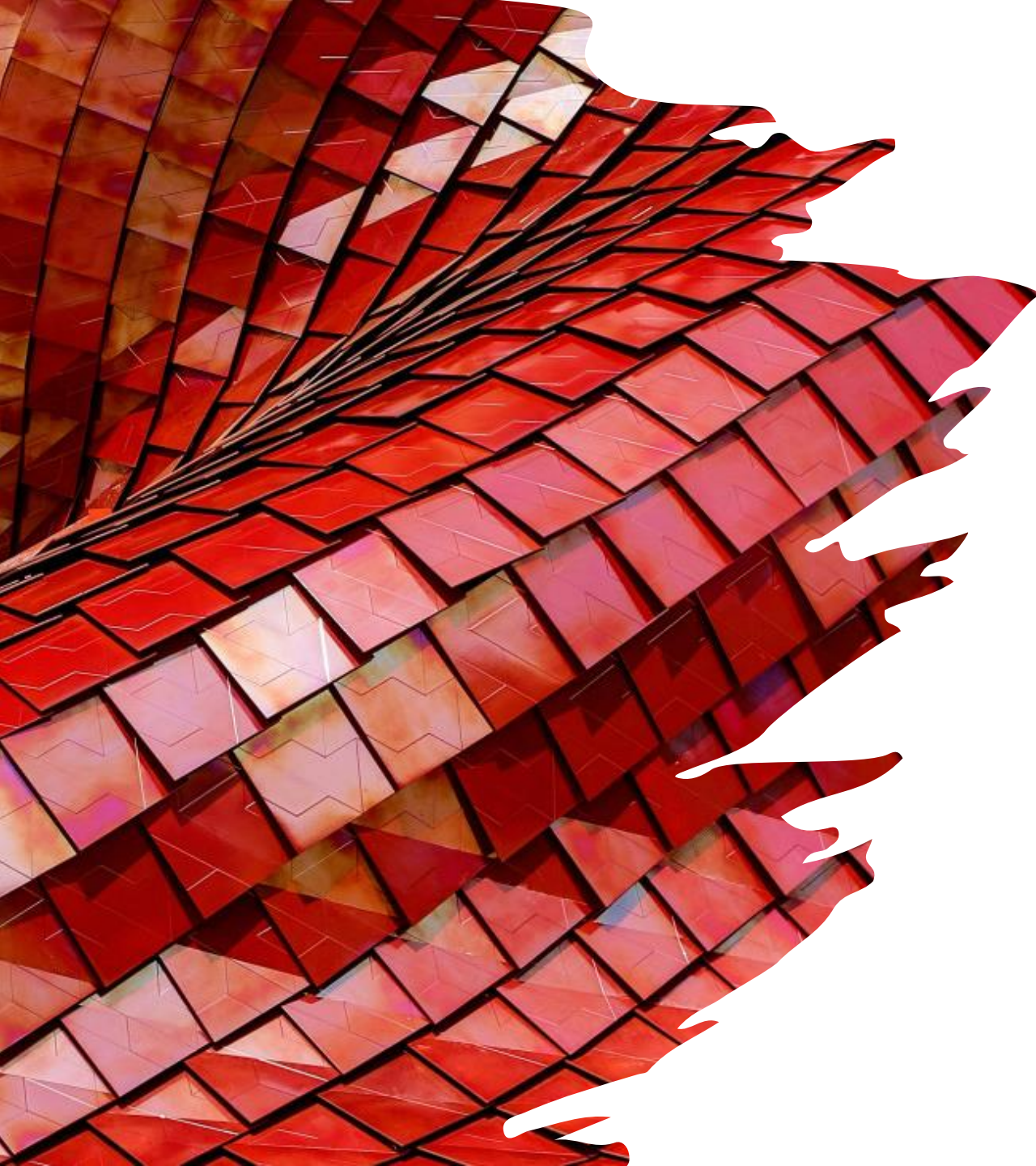


- “Selective implementation” of capital improvement surcharges:
- If a landlord wants to continue a rent surcharge for the purpose of making capital improvements beyond the initial 64- or 96-month surcharge period, the burden is on the landlord to demonstrate *good cause* for failing to recoup their costs up to that point.
- The landlord must provide detailed reasons for having failed to recoup its costs by executing a “certificate of continuation” with RAD.

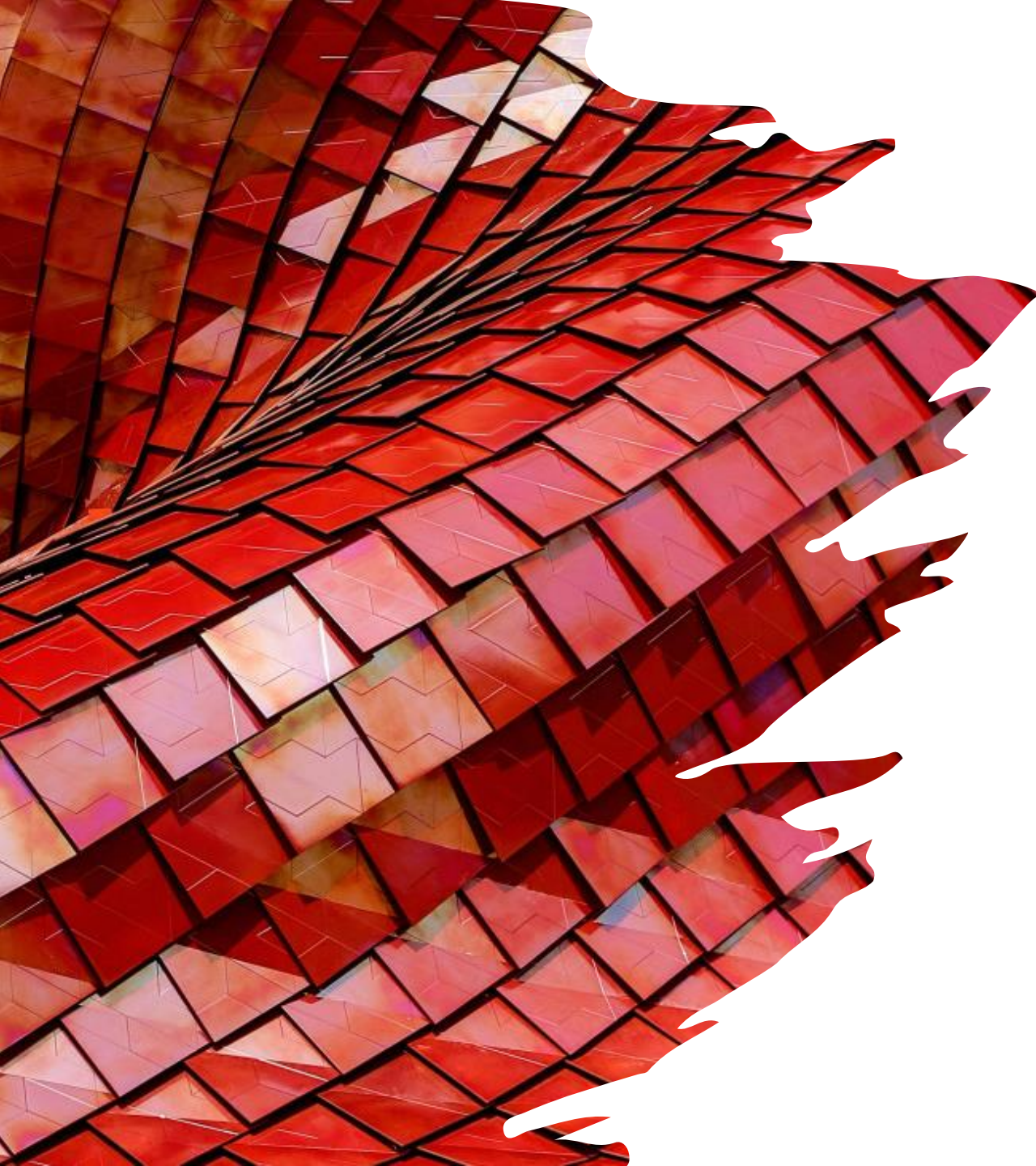


- Good cause *no longer* includes “inequitable implementation of the surcharge on specific tenants or rental units, or on classes of tenants or rental units.”
- This discourages landlords from shifting costs under a CI petition away from some tenants at the expense of others (i.e., “selective implementation”).





- **Horizontal stacking:** Tenants may contest a capital improvement petition on the basis that the improvement is “substantially related” to an improvement already subject to a separate capital improvement petition, such that simultaneous implementation of both would circumvent the 15% or 20% statutory rent increase limit.
- This will help prevent “horizontal stacking,” or the practice of exceeding the limit on rent increases under a capital improvement petition by essentially splitting a set of related improvements into two petitions with two separate rent increases.



- **Exceptions and objections:** A tenant now has *30 days* to submit exceptions and objections to a continuation of a capital improvement petition, *instead of the previous 15 days.*



# HP PETITIONS: SERVICES AND FACILITIES

- **Mandatory fees**
- **Statute of limitations (“SOL”) for challenges to a services and facilities petition**
- **Tenant testimony on conditions**



**Mandatory fees:** Mandatory fees for services and facilities cannot be charged, and the service/facility cannot be reduced or eliminated, without approval through the petition process. Here the Commission is implementing legislation passed by the Council that the OTA spearheaded.



**Statute of limitations (“SOL”) for challenges to a services and facilities petition:** The three-year SOL would begin to run when tenant knows that the service or facility will not be restored, rather than from the time it was shut off.

**For example:** If a service or facility was shut off a year ago, but the tenant only learns today that the service or facility will not be restored, then the tenant has three years from today to challenge rent increase that was meant to compensate for that service/facility.



# Substantial Rehabilitation Petitions

## Tenant testimony on conditions:

- An SR petition must be in the interest of the tenants in order to be approved.
- To that end, testimony by tenants is now admissible with respect to the physical condition of a housing accommodation.



# VOLUNTARY AGREEMENTS

- **Cooling off period**
- **Reasonableness test for voluntary agreements**
- **No vote where direct ownership interest**
- **All contested voluntary agreements reviewed by the Office of Administrative Hearings (OAH)**



- **Cooling off period:** After the VA is filed and served, tenants have 30 days to consider the agreement before signatures can be collected.
- This increases the “cooling off period” from 14 days to 30 days.





- **Reasonableness test for voluntary agreements:** The Commission created a new reasonableness test that includes the interest of the tenants and other relevant criteria. OAH, the Commission, and courts of law will consider this set of factors in determining whether a VA is reasonable.
- **The factors include:**
  - Capital improvements or deferred ordinary maintenance, including reserve funds
  - “Cost, scope & nature” of related services & facilities
  - Other costs identified in the VA
  - Rate of return
  - Comparable nearby rents
  - Relocation plans
  - Costs to tenants, including rent burden
  - Other terms of the agreement (side deals)
  - Disparate rent increases between units or tenants



- **No vote where direct ownership interest:** Tenant may not vote if the tenant has “direct or indirect ownership interest” in the property.
- This is intended to prevent tenants with a conflict of interest from voting on the voluntary agreement.



- **All contested voluntary agreements reviewed by the Office of Administrative Hearings (OAH):**
- RAD will not issue a final decision on a contested VA; instead, OAH will decide on the agreement's validity in an adversarial, court-like process in which both sides are represented.

# THANK YOU

For questions contact:

DISTRICT OF COLUMBIA  
OFFICE OF THE TENANT ADVOCATE

[www.ota.dc.gov](http://www.ota.dc.gov) | (202) 719-6560



(202) 719-6560 | 2000 14th Street, NW,  
300 N, Washington, DC 20009