

Overview of Security Deposits For Residential Leases

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How are deposits defined?

- Fla. Stat. §83.43

(11) “Deposit money” means any money held by the landlord on behalf of the tenant, including, but not limited to, damage deposits, security deposits, advance rent deposit, pet deposit, or any contractual deposit agreed to between landlord and tenant either in writing or orally.

(12) “Security deposits” means any moneys held by the landlord as security for the performance of the rental agreement, including, but not limited to, monetary damage to the landlord caused by the tenant’s breach of lease prior to the expiration thereof.

How can deposits be held?

- Fla. Stat. §83.49(1)
 - a) Non-Interest-bearing account (not commingled with operating funds)
 - b) Interest-bearing account (not commingled with operating funds)
 - c) Surety Bond (“The bond shall be in the total amount of the security deposit or advance rent held on behalf of tenants or in the amount of \$250,000, whichever is less.”)

Lease Disclosures

- Fla. Stat. §83.49(2)

In the lease (or by separate notice given within 30 days of receipt of any deposit), the landlord must disclose the nature of the deposit. The written notice must:

- (a) Be given in person or by mail to the tenant.
- (b) State the name and address of the depository where the advance rent or security deposit is being held or state that the landlord has posted a surety bond as provided by law.
- (c) State whether the tenant is entitled to interest on the deposit.

(continued)

Lease Disclosures (continued)

- (d) Contain the following disclosure:

YOUR LEASE REQUIRES PAYMENT OF CERTAIN DEPOSITS. THE LANDLORD MAY TRANSFER ADVANCE RENTS TO THE LANDLORD'S ACCOUNT AS THEY ARE DUE AND WITHOUT NOTICE. WHEN YOU MOVE OUT, YOU MUST GIVE THE LANDLORD YOUR NEW ADDRESS SO THAT THE LANDLORD CAN SEND YOU NOTICES REGARDING YOUR DEPOSIT. THE LANDLORD MUST MAIL YOU NOTICE, WITHIN 30 DAYS AFTER YOU MOVE OUT, OF THE LANDLORD'S INTENT TO IMPOSE A CLAIM AGAINST THE DEPOSIT. IF YOU DO NOT REPLY TO THE LANDLORD STATING YOUR OBJECTION TO THE CLAIM WITHIN 15 DAYS AFTER RECEIPT OF THE LANDLORD'S NOTICE, THE LANDLORD WILL COLLECT THE CLAIM AND MUST MAIL YOU THE REMAINING DEPOSIT, IF ANY.

IF THE LANDLORD FAILS TO TIMELY MAIL YOU NOTICE, THE LANDLORD MUST RETURN THE DEPOSIT BUT MAY LATER FILE A LAWSUIT AGAINST YOU FOR DAMAGES. IF YOU FAIL TO TIMELY OBJECT TO A CLAIM, THE LANDLORD MAY COLLECT FROM THE DEPOSIT, BUT YOU MAY LATER FILE A LAWSUIT CLAIMING A REFUND.

YOU SHOULD ATTEMPT TO INFORMALLY RESOLVE ANY DISPUTE BEFORE FILING A LAWSUIT. GENERALLY, THE PARTY IN WHOSE FAVOR A JUDGMENT IS RENDERED WILL BE AWARDED COSTS AND ATTORNEY FEES PAYABLE BY THE LOSING PARTY.

THIS DISCLOSURE IS BASIC. PLEASE REFER TO PART II OF CHAPTER 83, FLORIDA STATUTES, TO DETERMINE YOUR LEGAL RIGHTS AND OBLIGATIONS.



Lease Disclosures (continued)

- Fla. Stat. §83.49(2)
- Subsequent to providing such written notice, if the landlord changes the manner or location in which he or she is holding the advance rent or security deposit, he or she must notify the tenant within 30 days after the change as provided in paragraphs (a)-(d).
- The landlord is not required to give new or additional notice solely because the depository has merged with another financial institution, changed its name, or transferred ownership to a different financial institution.
- This subsection does not apply to any landlord who rents fewer than five individual dwelling units.
- Failure to give this notice is not a defense to the payment of rent when due.

Advance Rent

- Fla. Stat. §83.49(3)

(3) The landlord or the landlord's agent may disburse advance rents from the deposit account to the landlord's benefit when the advance rental period commences and without notice to the tenant.

What happens when the tenant vacates?

- Fla. Stat. §83.49(3)

(a) Upon the vacating of the premises for termination of the lease, if the landlord does not intend to impose a claim on the security deposit, the landlord shall have 15 days to return the security deposit together with interest if otherwise required, or the landlord shall have 30 days to give the tenant written notice by certified mail to the tenant's last known mailing address of his or her intention to impose a claim on the deposit and the reason for imposing the claim. The notice shall contain a statement in substantially the following form:

This is a notice of my intention to impose a claim for damages in the amount of _____ upon your security deposit, due to _____. It is sent to you as required by s. ~~83.49~~(3), Florida Statutes. You are hereby notified that you must object in writing to this deduction from your security deposit within 15 days from the time you receive this notice or I will be authorized to deduct my claim from your security deposit. Your objection must be sent to _____ (landlord's address).

Sample Notice of Claim

Original Sent Via Certified Mail Number XXXX XXXX XXXX XXXX XXXX

[Date]

[Tenants]

[New Address]

Re: Security Deposit Notification & Notice of Claim
[Name of Owner]/Landlord
[Address]/Property Address

Dear [Tenants]:

Please be aware that this is sent to you at your last known address or the mailing address you provided as a forwarding address for all correspondence.

Please consider this letter as notice of your landlord's intent to impose a claim on your security deposit in the amount of \$XXX.XX as follows:

Claims on Deposit:

[LIST ALL CLAIMS INDIVIDUALLY AND SPECIFICALLY]

\$ X,XXX.XX

TOTAL OF CLAIMS ON DEPOSIT

\$ X,XXX.XX

Credits:

SECURITY DEPOSIT

\$ X,XXX.XX

[OTHER DEPOSIT – i.e. LAST MONTH'S RENT, PET DEPOSIT]

\$ X,XXX.XX

[OTHER DEPOSITS]

\$ X,XXX.XX

TOTAL OF CREDITS

\$ X,XXX.XX

BALANCE OF DEPOSIT (OR BALANCE DUE)

\$ X,XXX.XX

This notice is sent to you as required by Fla. Stat. §83.49(3). You are hereby notified that you must object in writing to these deductions within 15 days from the time you receive this notice or your landlord will be authorized to deduct its claims from the deposit. Your objection must be sent to [Landlord's Name and Address].

The Landlord reserves the right to seek damages or amounts due which may exceed those listed above and this Notice it does not limit the Landlord's rights to seek such other sums as may be allowed by law.

Sincerely,

[Landlord]

The Notice of Claim (continued)

- Fla. Stat. §83.49(3)

If the landlord fails to give the required notice within the 30-day period, he or she forfeits the right to impose a claim upon the security deposit and may not seek a setoff against the deposit but may file an action for damages after return of the deposit.

(b) Unless the tenant objects to the imposition of the landlord's claim or the amount thereof within 15 days after receipt of the landlord's notice of intention to impose a claim, the landlord may then deduct the amount of his or her claim and shall remit the balance of the deposit to the tenant within 30 days after the date of the notice of intention to impose a claim for damages. The failure of the tenant to make a timely objection does not waive any rights of the tenant to seek damages in a separate action.

(c) If either party institutes an action in a court of competent jurisdiction to adjudicate the party's right to the security deposit, the prevailing party is entitled to receive his or her court costs plus a reasonable fee for his or her attorney. The court shall advance the cause on the calendar.

Exemption to Sending Notice of Claim

- Fla. Stat. §83.49(5)

(5) Except when otherwise provided by the terms of a written lease, any tenant who vacates or abandons the premises prior to the expiration of the term specified in the written lease, or any tenant who vacates or abandons premises which are the subject of a tenancy from week to week, month to month, quarter to quarter, or year to year, shall give at least 7 days' written notice by certified mail or personal delivery to the landlord prior to vacating or abandoning the premises which notice shall include the address where the tenant may be reached. Failure to give such notice shall relieve the landlord of the notice requirement of paragraph (3)(a) but shall not waive any right the tenant may have to the security deposit or any part of it.



Common Issues & Questions

- Legal standard is that premises are to be returned in the condition they were delivered, less normal wear-and-tear
- Is there a right to a walk-through?
- What can be included on Notice of Claim?
- Can you revise a Notice of Claim?
- What happens if the property is sold?

Questions?

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