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SECURITY DEPOSIT LAW N.J.S.A. 46:8-19 THROUGH 26

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46:8-19. Security deposits; investment, deposit, disposition

Whenever money or other form of security shall be deposited or advanced on a contract, lease or license agreement for the use or rental of real property as security for performance of the contract, lease or agreement or to be applied to payments upon such contract, lease or agreement when due, such money or other form of security, until repaid or so applied including the tenant's portion of the interest or earnings accumulated thereon as hereinafter provided, shall continue to be the property of the person making such deposit or advance and shall be held in trust by the person with whom such deposit or advance shall be made for the use in accordance with the terms of the contract, lease or agreement and shall not be mingled with the personal property or become an asset of the person receiving the same.

The person receiving money so deposited or advanced shall:

a. (1) Invest that money in shares of an insured money market fund established by an investment company based in this State and registered under the "Investment Company Act of 1940," 54 Stat. 789 (15 U.S.C. § 80a-1 et seq.) whose shares are registered under the "Securities Act of 1933," 48 Stat. 74 (15 U.S.C. § 77a. et seq.) and the only investments of which fund are instruments maturing in one year or less, or (2) deposit that money in a State or federally chartered bank, savings bank or savings and loan association in this State insured by an agency of the federal government in an account bearing a variable rate of interest, which shall be established at least quarterly, which is similar to the average rate of interest on active interest-bearing money market transaction accounts paid by the bank or association, or equal to similar accounts of an investment company described in paragraph (1) of this subsection.

This subsection shall not apply to persons receiving money for less than 10 rental units except where required by the Commissioner of Banking and Insurance by rule or regulation. The commissioner shall apply the provisions of this subsection to some or all persons receiving money for less than 10 rental units where the commissioner finds that it is practicable to deposit or invest the money received with an investment company or State or federally chartered bank,

savings bank or savings and loan association in accordance with this subsection. Except as expressly provided herein, nothing in this subsection shall affect or modify the rights or obligations of persons receiving money for rental premises or units, tenants, licensees or contractees under any other law.

b. Persons not required to invest or deposit money in accordance with subsection a. of this section shall deposit such money in a State or federally chartered bank, savings bank or savings and loan association in this State insured by an agency of the federal government in an account bearing interest at the rate currently paid by such institutions and associations on time or savings deposits.

c. The person investing the security deposit pursuant to subsection a. or b. of this section shall notify in writing each of the persons making such security deposit or advance, giving the name and address of the investment company, State or federally chartered bank, savings bank or savings and loan association in which the deposit or investment of security money is made, the type of account in which the security deposit is deposited or invested, the current rate of interest for that account, and the amount of such deposit or investment, in accordance with the following:

(1) within 30 days of the receipt of the security deposit from the tenant;

(2) within 30 days of moving the deposit from one depository institution or fund to another, except in the case of a merger of institutions or funds, then within 30 days of the date the person investing the security deposit receives notice of that merger, or from one account to another account, if the change in the account or institution occurs more than 60 days prior to the annual interest payment;

(3) within 30 days after the effective date of P.L. 2003, c. 188 (*C. 46:8-21.4*);

(4) at the time of each annual interest payment; and

(5) within 30 days after the transfer or conveyance of ownership or control of the property pursuant to section 2 of P.L. 1967, c. 265 (*C. 46:8-20*).

All of the money so deposited or advanced may be deposited or invested by the person receiving the same in one interest-bearing or dividend yielding account as long as he complies with all the other requirements of this act.

The interest or earnings paid thereon by the investment company, State or federally chartered bank, savings bank or savings and loan association, shall belong to the person making the deposit or advance and shall be paid to the tenant in cash, or be credited toward the payment of rent due on the renewal or anniversary of said tenant's lease or on January 31, if the tenant has been given written notice after the effective date of P.L. 2003, c. 188 and before the next anniversary of the tenant's lease, that subsequent interest payments will be made on January 31 of each year.

If the person receiving a security deposit fails to invest or deposit the security money in the manner required under this section or to provide the notice or pay the interest to the tenant as required under this subsection, the tenant may give written notice to that person that such security money plus an amount representing interest at the rate of seven percent per annum be applied on account of rent payment or payments due or to become due from the tenant, and thereafter the tenant shall be without obligation to make any further security deposit and the person receiving the money so deposited shall not be entitled to make further demand for a security deposit. However, in the case of a failure by the person receiving the security deposit to pay the annual interest or to provide the annual notice at the time of the annual interest payment, if the annual notice is not also serving as a notice of change of account or institution, before the

tenant may apply the security deposit plus interest on account of the rent payment or payments due or to become due on the part of the tenant, the tenant shall first give that person a written notice of his failure and shall allow that person 30 days from the mailing date or hand delivery of this notice to comply with the annual interest payment or annual notice, or both.

d. The provisions of this section requiring that the security advanced be deposited or invested in a money market fund, or in an interest bearing account in a State or federally chartered bank, savings bank or savings and loan association shall not apply to any security advanced on a contract, lease or license agreement for the seasonal use or rental of real property. For purposes of this paragraph "seasonal use or rental" means use or rental for a term of not more than 125 consecutive days for residential purposes by a person having a permanent place of residence elsewhere. "Seasonal use or rental" does not mean use or rental of living quarters for seasonal, temporary or migrant farm workers in connection with any work or place where work is being performed. The landlord shall have the burden of proving that the use or rental of the residential property is seasonal.

HISTORY: L. 1967, c. 265, § 1; amended 1971, c. 223, § 1; 1973, c. 195; 1979, c. 28, § 1; 1985, c. 42, § 1; 1990, c. 100; 1997, c. 310; 2003, c. 188, § 1, eff. Jan. 1, 2004.

46:8-19.1. Rules, regulations

The Commissioner of Banking may, in his discretion, promulgate rules and regulations with respect to the establishment of the method of computing the interest due to either the person receiving the money as a security deposit or to the tenant pursuant to the provisions of P.L. 1967, c. 265 (*C. 46:8-19 et seq.*) or P.L. 1971, c. 223 (*C. 46:8-21.1 et seq.*) if the money is deposited in an account or in shares of an investment company upon which the interest varies on a periodic basis.

46:8-20. Procedure on conveyance of property

Any person, whether the owner or lessee of the property leased, who or which has or hereafter shall have received from a tenant or licensee a sum of money as a deposit or advance of rental as security for the full performance by such tenant or licensee of the terms of his contract, lease or license agreement, or who or which has or shall have received the same from a former owner or lessee, shall, upon conveying such property or assigning his or its lease to another, or upon the conveyance of such property to another person by a court in an action to foreclose a mortgage thereon, at the time of the delivery of the deed or instrument of assignment, or within five days thereafter, or in the event of the insolvency or bankruptcy of the person receiving said deposit, within five days after the making and entry of an order of the court discharging the receiver or trustee, deal with the security deposit by turning over to his or its grantee or assignee, or to the purchaser at the foreclosure sale the sum so deposited, plus the tenant's portion of the interest or earnings accumulated thereon, and notify the tenant or licensee by registered or certified mail of such turning over and the name and address of such grantee, assignee or purchaser. Notwithstanding any other provision of law to the contrary, it shall be the duty and obligation of the grantee, assignee or purchaser to obtain from the grantor who is the owner or lessee at the time of the transfer, conveyance or purchase any and all security deposits, plus accrued interest on the deposits, that the owner or lessee received from a tenant, licensee or previous owner or lessee, and which deposits were invested, or should have been invested, in the manner required by section 1 of P.L. 1967, c. 265 (*C. 46:8-19*).

46:8-21. Liability on transfer

Any owner or lessee turning over to his or its grantee, assignee, or to a purchaser of the leased premises at a foreclosure sale the amount of such security deposit, plus the tenant's portion of the interest or earnings accumulated thereon, is hereby relieved of and from liability to the tenant or licensee for the repayment thereof. Whether or not the deposit plus accumulated interest are so transferred, the grantee, assignee or purchaser of the leased premises is nevertheless responsible for the proper investment of the security deposit, giving all notices and paying interest pursuant to section 1 of P.L. 1967, c. 265 (*C. 46:8-19*) and for the return of the security deposit, plus any accumulated earnings or interest thereon, to the tenant or licensee, in accordance with the terms of the contract, lease, or agreement unless he or it shall thereafter and before the expiration of the term of the tenant's lease or licensee's agreement, transfer such security deposit to another, pursuant to section 2 of P.L. 1967, c. 365 (*C. 46:8-20*) and give the requisite notice in connection therewith as provided thereby.

HISTORY: L. 1967, c. 265, § 3; amended 1971, c. 223, § 5; 1985, c. 42, § 3; 2003, c. 188, § 3, eff. Jan. 1, 2004.

46:8-21.1. Return of deposit; displaced tenant; civil penalties, certain

Within 30 days after the termination of the tenant's lease or licensee's agreement, the owner or lessee shall return by personal delivery, registered or certified mail the sum so deposited plus the tenant's portion of the interest or earnings accumulated thereon, less any charges expended in accordance with the terms of a contract, lease, or agreement, to the tenant or licensee, or, in the case of a lease terminated pursuant to P.L.1971, c.318 (*C.46:8-9.1*), the executor or administrator of the estate of the tenant or licensee or the surviving spouse of the tenant or licensee so terminating the lease. The interest or earnings and any such deductions shall be itemized and the tenant, licensee, executor, administrator or surviving spouse notified thereof by personal delivery, registered or certified mail. Notwithstanding the provisions of this or any other section of law to the contrary, no deductions shall be made from a security deposit of a tenant who remains in possession of the rental premises.

Within five business days after:

- a. the tenant is caused to be displaced by fire, flood, condemnation, or evacuation, and
- b. an authorized public official posts the premises with a notice prohibiting occupancy; or
- c. any building inspector, in consultation with a relocation officer, where applicable, has certified within 48 hours that displacement is expected to continue longer than seven days and has so notified the owner or lessee in writing, the owner or lessee shall have available and return to the tenant or the tenant's designated agent upon his demand the sum so deposited plus the tenant's portion of the interest or earnings accumulated thereon, less any charges expended in accordance with the terms of the contract, lease or agreement and less any rent due and owing at the time of displacement.

Such net sum shall continue to be available to be returned upon demand during normal business hours for a period of 30 days at a location in the same municipality in which the subject leased property is located and shall be accompanied by an itemized statement of the interest or earnings and any deductions. The owner or lessee may, by mutual agreement with the municipal clerk, have the municipal clerk of the municipality in which the subject leased property is located return said net sum in the same manner. Within three business days after receiving notification of

the displacement, the owner or lessee shall provide written notice to a displaced tenant by personal delivery or mail to the tenant's last known address. Such notice shall include, but not be limited to, the location at which and the hours and days during which said net sum shall be available to him. The owner or lessee shall provide a duplicate notice in the same manner to the relocation officer. Where a relocation officer has not been designated, the duplicate notice shall be provided to the municipal clerk. When the last known address of the tenant is that from which he was displaced and the mailbox of that address is not accessible during normal business hours, the owner or lessee shall also post such notice at each exterior public entrance of the property from which the tenant was displaced. Any such net sum not demanded by and returned to the tenant or the tenant's designated agent within the period of 30 days shall be redeposited or reinvested by the owner or lessee in an appropriate interest bearing or dividend yielding account in the same investment company, State or federally chartered bank, savings bank or savings and loan association from which it was withdrawn. In the event that said displaced tenant resumes occupancy of the premises, said tenant shall redeliver to the owner or lessee one-third of the security deposit immediately, one-third in 30 days and one-third 60 days from the date of reoccupancy. Upon the failure of said tenant to make such payments of the security deposit, the owner or lessee may institute legal action for possession of the premises in the same manner that is authorized for nonpayment of rent.

The Commissioner of Community Affairs, the Public Advocate, the Attorney General, or any State entity which made deposits on behalf of a tenant may impose a civil penalty against an owner or lessee who has willfully and intentionally withheld deposits in violation of section 1 of P.L.1967, c.265 (C.46:8-19), when the deposits were made by or on behalf of a tenant who has received financial assistance through any State or federal program, including welfare or rental assistance. An owner or lessee of a tenant on whose behalf deposits were made by a State entity and who has willfully and intentionally withheld such deposits in violation of this section shall be liable for a civil penalty of not less than \$ 500 or more than \$ 2,000 for each offense. The penalty prescribed in this paragraph shall be collected and enforced by summary proceedings pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). The State entity which made such deposits on behalf of a tenant shall be entitled to any penalty amounts recovered pursuant to such proceedings.

In any action by a tenant, licensee, executor, administrator or surviving spouse, or other person acting on behalf of a tenant, licensee, executor, administrator or surviving spouse, for the return of moneys due under this section, the court upon finding for the tenant, licensee, executor, administrator or surviving spouse shall award recovery of double the amount of said moneys, together with full costs of any action and, in the court's discretion, reasonable attorney's fees.

HISTORY: L. 1971, c. 223, § 3; amended 1974, c. 151, § 1; 1979, c. 115, § 1; 1985, c. 42, § 4; 1985, c. 317, § 1; 2003, c. 188, § 4, eff. Jan. 1, 2004; 2007, c. 9, § 2, eff. Jan. 24, 2007.

46:8-21.2. Limitation on amount of deposit

An owner or lessee may not require more than a sum equal to 1 1/2 times 1 month's rental according to the terms of contract, lease, or agreement as a security for the use or rental of real property used for dwelling purposes. Whenever an owner or lessee collects from a tenant an additional amount of security deposit, the amount collected annually as additional security shall not be greater than 10 percent of the current security deposit.

HISTORY: L. 1971, c. 223, § 4; amended 2003, c. 188, § 5, eff. Jan. 1, 2004.

46:8-21.3. Security deposits prior to effective date of act; date of compliance

Security deposits made prior to the effective date of this act shall comply with the provisions of this act within 90 days of the effective date thereof.

HISTORY: L. 1971, c. 223, 6, eff. June 21, 1971.

46:8-21.4. Small claims jurisdiction of actions on security deposits less than \$5,000

Notwithstanding any law or rule to the contrary, the Division of Small Claims of the Superior Court, Law Division, Special Civil Part shall have jurisdiction of actions between an owner or lessee and tenant for the return of all or a part of a security deposit in which the amount in dispute, including any applicable penalties, does not exceed the sum of \$ 5,000, exclusive of costs.

HISTORY: L. 2003, c. 188, § 6, eff. Jan. 1, 2004.

46:8-21.5. Deposit recovery, certain; court action not required for tenant receiving financial assistance

A tenant who has received financial assistance through any State or federal program, including welfare or rental assistance, shall not be required to file an action in court to recover deposits withheld by a landlord in violation of P.L.1967, c.265 (*C.46:8-19 et seq.*) in order to continue participation in any such program.

HISTORY: L. 2007, c. 9, § 1, eff. Jan. 24, 2007.

46:8-22. Enforcement of trust by civil action

Any trust arising under the provisions of this act shall be enforceable by a civil action in a court of competent jurisdiction and that court shall have jurisdiction to make any appropriate order or judgment both pendente lite and final to fully effectuate the purposes of this act.

46:8-23. Statutory trust upon insolvency or bankruptcy of person receiving security deposit

In the event of the insolvency or bankruptcy of the person receiving the said moneys, the claim of the person who paid the said moneys shall constitute a statutory trust with respect to any moneys so received and not previously expended in accordance with the terms of the contract, lease or agreement.

HISTORY: L. 1967, c. 265, 5, eff. Jan. 1, 1968.

46:8-24. Waiver by depositor prohibited

Any provision of such a contract, lease or agreement whereby a person who so deposits or advances money waives any provision of this act is absolutely void.

HISTORY: L. 1967, c. 265, 6, eff. Jan. 1, 1968.

46:8-25. Unlawful diversion of trust funds; penalty

Any person party to said contract, lease or agreement, or any agent of said person, or any officer of a corporation receiving said moneys, who, with knowledge that such moneys constitute trust funds, unlawfully diverts or consents to an unlawful diversion of such moneys shall be a disorderly person and subject to a fine of not less than \$ 200.00 or by imprisonment for not more than 30 days, or both.

HISTORY: L. 1967, c. 265, 7, eff. Jan. 1, 1968.

46:8-26. Application of act

The provisions of this act shall apply to all rental premises or units used for dwelling purposes except owner-occupied premises with not more than two rental units where the tenant has failed to provide 30 days written notice to the landlord invoking the provisions of this act.

HISTORY: L. 1967, c. 265, 8, eff. Jan. 1, 1968. Amended by L. 1968, c. 46, 1, eff. May 22, 1968; L. 1971, c. 223, 7, eff. June 21, 1971; L. 1979, c. 28, 3, eff. Feb. 22, 1979.