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CHANGES TO THE SECURITY DEPOSIT LAW

On June 16, 2003, the New Jersey Legislature passed Assembly Bill A-2608. The law was signed into effect by the Governor as Public Law 2003, Chapter 188 on October 1, 2003. The law amended the Security Deposit Act, NJSA 46:8-19, *et seq.*, and is effective January 1, 2004.

The new law makes various changes to the Security Deposit Act, including requiring more detailed notice to tenants regarding the deposit or investment of their security deposits, requiring more frequent notices to tenants and also makes substantive changes regarding the rights and responsibilities of landlord and tenant concerning a security deposit. The new law applies to all tenancies in effect, not merely tenancies created after the effective date of the new law. All the changes are discussed below.

NOTICE CONTENT CONCERNING SECURITY DEPOSITS

Under the old law, the tenant is only entitled to receive notice of "the amount of the deposit held" and the "name and street address" of the bank or other authorized institution where the security deposit is deposited or invested.

Under the new law, the landlord is required to give notice of the following to the tenant:

- 1) The name and address of the bank or other authorized institution where the security deposit is deposited or invested;
- 2) The type of account where the security deposit is deposited or invested;
- 3) The current rate of interest for the account; and
- 4) The amount of the security deposit deposited or invested.

WHEN MUST NOTICE BE GIVEN

Under the old law, the landlord is required to give the tenant notice within 30 days of receipt of the deposit. Under the new law the landlord must give the tenant notice:

1) By January 31, 2004 (30 days after the effective date of the new law);

2) Within 30 days of initial receipt of a security deposit (as provided in the old law);

3) At the time of each annual interest payment (annual notice is not required under the old law);

4) Within 30 days of moving the deposit or investment to another bank or approved institution, or from one account to another in the same institution, but only if the move occurs more than 60 days before the scheduled annual notice and annual payment of interest. If the move occurs less than 60 days before the annual notice and annual interest payment is due, notice of the move may be given with the annual notice due at the time of the annual interest payment;

5) Within 30 days after the landlord receives notice that the bank or other authorized institution has been affected by a merger; and

6) Within 30 days after the purchase of the property.

SUBSTANTIVE CHANGES

1. Payment of Interest Earned

Under the new law, the interest earned on the security deposit must be paid to the tenant or credited against the rent due on the anniversary date of the tenancy, or on or before January 31st of each year, provided the landlord gives the initial notice required by the law by January 31, 2004 and in that notice advises the tenant that thereafter interest will be paid on January 31st of each year. The old law allows the interest to be compounded to the benefit of the tenant and be held until the termination of the tenancy.

2. Application of the Security Deposit to Rent

If the landlord:

- a) Fails to deposit the security deposit in an account within 30 days after receipt of same;
- b) Fails to give the notice required within 30 days after receipt of the security deposit;
- c) Fails to give the notice required upon moving the security deposit from one institution to another or from one account to another within the same institution; or
- d) Fails to give notice of a merger affecting the institution where the security deposit is held within 30 days after receiving notice of the merger; then

The tenant may upon written notice demand that the security deposit, together with interest at the rate of 7% per annum, be applied to rent due or to become due, and thereafter, while the tenant remains in possession, the landlord may not require the tenant to pay a further security deposit.

If the landlord fails to give the annual notice required by the law, or fails to pay the annual interest due, then the tenant must give the landlord written notice that the landlord must comply within 30 days of the date of mailing or hand-delivery of the tenant's notice, and if the landlord fails to do so, the security deposit, together with interest at the rate of 7% per annum, will be applied to rent due or to become due, and thereafter, while the tenant remains in possession, the landlord may not require the tenant to pay a further security deposit.

3. Administrative Expenses

The old law allowed the landlord to deduct from the security deposit an administrative fee of 1% per year before returning the security deposit to the tenant after the termination of the tenancy. This has been abolished under the new law.

4. Deductions from the Security Deposit During the Tenancy

The new law makes it clear that the landlord may not make deductions from the security deposit while the tenant remains in possession. Under the old law, there was a substantial question as to whether or not this was allowed.

5. Limitation on Amount of Security Deposit

The old law limits the amount of security deposit a landlord may hold to a maximum of 1½ months' rent. This is carried over into the new law. The new law also limits the amount of an increase in security deposit to 10% of the existing security deposit per year. Thus, under the new law, the security deposit may never exceed 1½ months' rent and may not be increased by more than 10% per year.

6. Jurisdictional Limit of Small Claims Court Increased

Suits for return of security deposits, where the amount in dispute, including any applicable penalties, does not exceed \$5,000.00, exclusive of costs, may be brought in the Small Claims Court. Generally, the jurisdictional limit of the Small Claims Court is \$3,000.00. There is some question about whether attorneys fees that may be awarded to the successful tenant are one of the "applicable penalties" or "costs".

7. New Owner's Liability for Return of Security Deposit and Notices.

Under the new law, a new landlord purchasing a property with tenants is responsible for returning the security deposits plus interest to the tenants when due, as well as depositing the security deposits and giving all required notices, whether or not the purchaser actually received the security deposits from the old owner. This also applies to properties purchased in foreclosure, where it is all but certain that the purchaser did not receive a transfer of the security deposit from the former owner.

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