

SECURITY DEPOSITS

Section 83.49, Florida Statutes, delineates the guidelines regarding a tenant's security deposit. This section provides the time periods that a landlord must return a security deposit or notify a tenant in writing of the landlord's intention to impose a claim upon the deposit. If the landlord *does not* intend to impose a claim, the landlord has 15 days to return the security deposit (with interest if the security deposit was held by the landlord in an interest-bearing account) to the tenant. A full return of a tenant's security deposit should be sent to the tenant's last known address by certified mail *and* as a precaution, regular mail.

If the landlord *does* intend to impose a claim, the landlord has 30 days to notify the tenant of the landlord's intention to impose a claim on the tenant's security deposit *and* the reason for imposing the claim. Such a notice *must* be sent to the tenant by certified mail to the tenant's last known mailing address. Unless the tenant objects to the landlord's claim (all or in part) within 15 days after receipt of the landlord's notice, the landlord may then deduct the amount of the claim from the tenant's security deposit. The landlord must send the tenant the unused portion of the security deposit within 30 days after the date that the landlord sends the first notice imposing a claim upon the security deposit.

If the landlord fails to give the required notice within the 30-day period, the landlord forfeits the right to impose a claim upon the security deposit. This *does not* mean that the landlord loses his or her claim against the tenant for damages or unpaid rent; it only means that the landlord must refund the tenant's security deposit and pursue the tenant for damages through a civil action. Also, if a tenant vacates or abandons his or her apartment prior to the expiration of the lease, the tenant must give the landlord written notice indicating that the tenant is vacating or abandoning the apartment and must provide the tenant's new address. This notice must be provided to the landlord at least 7 days prior to the tenant vacating or abandoning the apartment, and must be delivered by certified mail or personal delivery to the landlord. A tenant's failure to give such notice shall relieve the landlord of the 15-day and 30-day notice requirements set forth above, but does not waive any right the tenant may have to the security deposit or any part thereof.

In addition to the guidelines concerning the return of a tenant's security deposit or notice to a tenant of a landlord's intent to impose a claim, section 83.49

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also provides guidelines for a landlord regarding the location and/or handling of a tenant(s) security deposit. Those guidelines are as follows:

(a) Hold the total amount of such money in a separate non-interest-bearing account in a Florida banking institution for the benefit of the tenant or tenants. The landlord shall not commingle such moneys with any other funds of the landlord or hypothecate, pledge, or in any other way make use of such moneys until such moneys are actually due the landlord;

(b) Hold the total amount of such money in a separate interest-bearing account in a Florida banking institution for the benefit of the tenant or tenants, in which case the tenant shall receive and collect interest in an amount of at least 75 percent of the annualized average interest rate payable on such account or interest at the rate of 5 percent per year, simple interest, whichever the landlord elects. The landlord shall not commingle such moneys with any other funds of the landlord or hypothecate, pledge, or in any other way make use of such moneys until such moneys are actually due the landlord; or

(c) Post a surety bond, executed by the landlord as principal and a surety company authorized and licensed to do business in the state as surety, with the clerk of the circuit court in the county in which the dwelling unit is located in the total amount of the security deposits and advance rent he or she holds on behalf of the tenants or \$ 50,000, whichever is less. The bond shall be conditioned upon the faithful compliance of the landlord with the provisions of this section and shall run to the Governor for the benefit of any tenant injured by the landlord's violation of the provisions of this section. In addition to posting the surety bond, the landlord shall pay to the tenant interest at the rate of 5 percent per year, simple interest. A landlord, or the landlord's agent, engaged in the renting of dwelling units in five or more counties, who holds deposit moneys or advance rent and who is otherwise subject to the provisions of this section, may, in lieu of posting a surety bond in each county, elect to post a surety bond in the form and manner provided in this paragraph with the office of the Secretary of State. 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. The bond shall be conditioned upon the faithful compliance of the landlord with the provisions of this section and shall run to the Governor for the benefit of any tenant injured by the landlord's violation of this section. In addition to posting a surety bond, the landlord shall pay to the tenant interest on the security deposit or advance rent held on behalf of that tenant

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at the rate of 5 percent per year simple interest.

In addition to the above, a landlord *must*, within 30 days of receipt of advance rent or a security deposit, notify the tenant in writing of the manner in which the landlord is holding the advance rent or security deposit and the rate of interest, if any, which the tenant is to receive and the time of interest payments to the tenant. Such 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, whether the advance rent or security deposit is being held in a separate account for the benefit of the tenant or is commingled with other funds of the landlord, and, if commingled, whether such funds are deposited in an interest-bearing account in a Florida banking institution.

(c) Include a copy of the provisions of subsection (3) (see below).

Subsequent to providing such 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 shall notify the tenant within 30 days of the change according to the provisions herein set forth. This subsection does not apply to any landlord who rents fewer than five individual dwelling units. Failure to provide this notice shall not be a defense to the payment of rent when due.

The following is subsection (3) of section 83.49, Florida Statutes, which a landlord must provide IN ITS ENTIRETY to a tenant within 30 days of receipt of advance rent or a security deposit:

(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

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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).

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.

(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.

(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.

(d) Compliance with this section by an individual or business entity authorized to conduct business in this state, including Florida-licensed real estate brokers and salespersons, shall constitute compliance with all other relevant Florida Statutes pertaining to security deposits held pursuant to a rental agreement or other landlord-tenant relationship. Enforcement personnel shall look solely to this section to determine compliance. This section prevails over any conflicting provisions in chapter 475 and in other sections of the Florida Statutes, and shall operate to permit licensed real estate brokers to disburse security deposits and deposit money without having to comply with the notice and settlement procedures contained in s. 475.25(1)(d).

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NOTICE OF INTENTION TO IMPOSE CLAIM UPON SECURITY DEPOSIT

TO: _____
Tenant's Name(s)

DATE: _____

Tenant's Street Address

City, County, State, and Zip

YOU ARE HEREBY NOTIFIED that _____ intends to impose a claim for damages in the amount of \$_____ upon your security deposit due to the reasons set forth below.

This Notice is sent to you as required by section 83.49(3), Florida Statutes. You are hereby notified that you must object in writing to this deduction from your security deposit within fifteen (15) days from the time you receive this notice or the landlord will be authorized to deduct his/her claim from you security deposit. Your objection must be sent to the landlord at the address listed below.

By: _____
Name

Apartment Community

Title

Community Street Address

Telephone Number

City, State, Zip

Amount of Security Deposit:	\$ _____
Interest (if applicable):	\$ _____
Total:	\$ _____
Less damages and rent due:	
_____ :	<\$ _____>
_____ :	<\$ _____>
_____ :	<\$ _____>
_____ :	<\$ _____>

(Attach additional documentation if necessary)

Total damages and rent due:	<\$ _____>
Refund due to tenant (if any):	\$ _____

CERTIFICATION OF DELIVERY

I HEREBY CERTIFY that a true copy hereof was furnished by U.S. Certified Mail,

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Return Receipt Requested, receipt number _____, to the tenant's last known address (listed above) on _____.

(Signature and Title)

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Post Office Box 2327, Brandon, Florida 33509-2327 (813) 662-1536

NOTICE OF INTENTION TO IMPOSE CLAIM UPON SECURITY DEPOSIT

TO: **MR. AND MRS. ABC**
Tenant's Name(s)

DATE: **January 30, 2002**

1234 ABC ROAD, APARTMENT 201
Tenant's Street Address

EXAMPLE

TAMPA, FLORIDA 33600
City, County, State, and Zip

YOU ARE HEREBY NOTIFIED that **HAPPY PLACES APARTMENTS** intends to impose a claim for damages in the amount of \$ **1,500.00** upon your security deposit due to the reasons set forth below.

This Notice is sent to you as required by section 83.49(3), Florida Statutes. You are hereby notified that you must object in writing to this deduction from your security deposit within fifteen (15) days from the time you receive this notice or the landlord will be authorized to deduct his/her claim from you security deposit. Your objection must be sent to the landlord at the address listed below.

By: **JENNIFER GOOD GIRL**
Name
ASSISTANT MANAGER
Title
(813) 555-1212
Telephone Number

HAPPY PLACES APARTMENTS
Community
1234 ABC ROAD
Community Street Address
TAMPA, FLORIDA 33600
City, State, Zip

Amount of Security Deposit:	\$ <u>250.00</u>
Interest (if applicable):	\$ <u>N/A.</u>
Total:	\$ <u>250.00</u>
Less damages and rent due:	
<u>Cleaning</u> :	< \$ <u>85.00</u> >
<u>Replacement of carpeting undue wear and tear</u> :	< \$ <u>385.00</u> >
<u>Forfeiture of rental concession (2 months @ \$895.00 per month)</u> :	< \$ <u>1,790.00</u> >
(Attach additional documentation if necessary)	
Total damages and rent due:	< <u>2,010.00</u> >

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Refund due to tenant (if any):

\$ 0.00 .

Certification of Delivery

I HEREBY CERTIFY that a true copy hereof was furnished by U.S. Certified Mail, Return Receipt Requested, receipt number 7100-01200-123456 , to the tenant's last known address (listed above) on **January 30, 2002.**

JENNIFER GOOD GIRL, ASSISTANT MANAGER

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