

QUESTIONS AND ANSWERS

Q. Is it necessary to keep security deposits in a separate account or can they be commingled with other accounts of the Landlord?

A. First, it is important to understand that advance rent must be held in the same manner as the security deposit. Which means if you collect a first month's rent, last month's rent and security deposit. The security deposit and last month's rent must be kept together as explained in this paragraph.

When the landlord collects security deposit or advanced rent funds from the resident, the landlord may keep the funds in one of three ways according to Florida Statute 83.49: (a) in a non-interest-bearing account, (b) in an interest-bearing account; or (c) in a commingled account.

Section 83.49 (1) (a) states that the monies may be held in a separate *non-interest-bearing* account in a Florida banking institution. When the funds are held in such a manner, no interest is due the resident and none should be paid by the landlord.

Section 83.49 (1) (b) provides a second option in that the monies may be held in a separate *interest-bearing* account in a Florida banking institution. In such a case, the resident shall receive at least 75% of the annualized average interest rate payable on such account or interest at the rate of 5% per year, simple interest, whichever the landlord chooses. Under both Section 83.49 (1) (a) and (1) (b), the landlord *may not* commingle the funds, use or pledge the funds monies in any way until they are actually due the landlord.

The final option offered the landlord under Section 83.49 (1) (c) permits the landlord to commingle funds but provides strict statutory requirements for such actions. The landlord must post a surety bond 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 or advanced rent he or she holds or \$50,000 which is less. The landlord shall additionally pay the resident an interest rate of 5% per year, simple interest. For the landlord who has dwelling units in five or more counties in the state, the landlord may elect to post a surety bond with the Secretary of State in the amount of the security deposits or advanced rent held or \$250,000, whichever is less.

Whichever option you choose, landlords who rent five or more individual units must notify the resident in writing within 30 days of receipt of the funds of the following:

- a. The manner in which you are holding such funds, non-interest-bearing, interest-bearing or commingled account.
- b. The rate of interest, if any, to be paid to the resident and the time of interest payments.
- c. The location of the depository (name and address only) in which the funds are being held in a non-interest or interest-bearing account. If the funds are commingled, you must state if the funds are deposited in an interest-bearing account in a Florida banking institution.

In addition, the landlord must include the provisions of Florida Statutes 83.49 (3) which explains the procedure that the landlord must follow after the resident vacates when the landlord wishes to impose a claim on the security deposit.

If during the term of the resident's tenancy, the landlord changes the manner in which the security deposits and advanced rent is held, the landlord must notify the resident within 30 days of the change according to the provisions stated in the prior paragraph.

Q. Does the procedure for holding security deposits and advanced rent also apply to commercial rental or self-storage facilities?

A. No. Section 83.49 of the Florida Statutes applies to residential tenancies only. Commercial space and self-storage facilities are governed by general contract law and/or Florida Statute 83, Part I (Nonresidential tenancies) and Part III (Self-Storage Facilities). In fact, the provisions of the residential tenancies are generally more stringent for the landlord than those for commercial space or self-storage facilities. Landlord of these types of rental space must refer to the contract between the parties and the appropriate section of the Statute.