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## A Security Deposit Primer—Part 1 Holding the Funds

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A hundred years ago, a landlord had few obligations in how he handled the security deposit. There was no statute telling him to keep it separate from his other funds. There was no obligation to make a “claim” on the deposit. He did not have to tell the tenant where the deposit was being held. That was then, this is now.

### **What does the statute cover?**

All security deposits are governed by Florida Statute Section 83.49. The statute defines a security deposit as all funds that are “deposited or advanced by a tenant on a rental agreement as security for performance of the rental agreement or as advance rent for other than the next immediate rental period.” That means that any money held for some future event, like future rent coming due or repairing damages after the tenant moves out, is covered by the statute.

### **Three ways to hold the funds.**

The landlord is obligated to hold the security deposit and advance rent in one of three ways.

The first option is to hold it in a separate non-interest bearing account in a Florida banking institution. The landlord cannot commingle the money with any other funds of his or otherwise make use of the funds, until the funds are actually due the landlord.

The second option is to hold the security deposit in a separate interest-bearing account in a Florida banking institution. If this option is used, the tenant is entitled to receive interest. The amount of interest shall either be 75 percent of the annualized average interest rate payable on the account OR 5 percent per year, simple interest. The landlord chooses. As with the first option, the landlord cannot commingle the money with any other funds of his or otherwise make use of the funds, until the funds are actually due the landlord.

The third option is to post a surety bond. The bond must be in an amount equal to the total amount of the security deposits and advance rent or \$50,000, whichever is less. This option is so rarely used that this article will skip the remaining details.

### **Keeping the deposit in a Florida Bank.**

Any security deposit account, whether interest bearing or not, MUST be kept in a Florida bank.

The account must be in a bank that is chartered to do business in Florida. Most, but not all, banks that are physically located within the state fit into this category. (Not sure about your bank? Ask them if they are chartered in Florida. They easily know the answer.) If an out-of-state owner wants to hold the deposit in his own account, it needs to meet this criteria. It is not sufficient for the owner to place the deposit in national bank located in his home state which has branches in Florida.

### **Keeping deposit funds separate.**

The deposit and advance rent must be kept separate from other funds.

If an agent collects the funds on behalf of the landlord, the agent should either deposit them into the escrow account that is set up in the agent's office, OR send the funds to the Florida bank account that the landlord has set up. It is not proper to send them directly to the landlord.

**If an owner is holding a deposit, it must be in an account that is set up for the purpose of holding the deposit. It cannot be mixed in the with the owner's other funds in a checking or saving account.**

