

## 10 §9098. SECURITY DEPOSITS

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**1. Maximum security deposit.** No lessor of a mobile home park lot may require a security deposit greater than 3 months' rent.

[ 1987, c. 737, Pt. B, §1 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

**2. Return of security deposit.** The following provisions apply to the retention and return of a security deposit.

A. A security deposit or any portion of a security deposit may not be retained to pay for normal wear and tear. [1987, c. 737, Pt. B, §1 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

B. A mobile home park operator shall return to a tenant the full security deposit deposited with the landlord by the tenant, with interest in accordance with subparagraph (4) or, if there is actual cause for retaining the security deposit or any portion of it, the mobile home park operator shall provide the tenant with a written statement, itemizing the reasons for the retention of the security deposit or any portion of it, within 21 days after the termination of the tenancy or the surrender and acceptance of the premises, whichever occurs first.

(1) The written statement itemizing the reasons for the retention of any portion of the security deposit must be accompanied by a full payment of the difference between the security deposit and the amount retained.

(2) The mobile home park operator is deemed to have complied with this section if the operator mails the statement and any payment required to the tenant's last known address.

(3) Nothing in this section precludes the mobile home park operator from retaining the security deposit for nonpayment of rent or nonpayment of utility charges which the tenant was required to pay directly to the mobile home park operator.

(4) The amount of interest that must be returned to a tenant must be either the amount that the mobile home park operator has earned on the security deposit if deposited in an individual segregated bank savings account or a reasonable amount of annual interest. For purposes of this subsection, "a reasonable amount of annual interest" means interest calculated at the Federal Reserve Bank, secondary market, annual interest rate on a 6-month certificate of deposit for each year in which the deposit has been held calculated as of the first business day of each year. [2009, c. 128, §1 (AMD) .]

C. If a mobile home park operator fails to provide a written statement or to return the security deposit within the time specified in paragraph B, the park owner or operator forfeits the right to withhold any portion of the security deposit. [1987, c. 737, Pt. B, §1 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

[ 2009, c. 128, §1 (AMD) .]

**3. Wrongful retention; damages; burden of proof.** The following provisions apply to the wrongful retention of a security deposit by a mobile home park operator.

A. If the mobile home park operator fails to return the security deposit and provide the itemized statement within 21 days as specified in subsection 2, paragraph B, the tenant must notify the mobile home park operator of the intention to bring a legal action at least 7 days before commencing the action.

If the mobile home park operator fails to return the entire security deposit within the 7-day period, it is presumed that the landlord is willfully and wrongfully retaining the security deposit. [1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD); 1989, c. 502, Pt. A, §32 (AMD).]

B. A mobile home park operator who willfully retains a security deposit in violation of this chapter is liable for double the amount of that portion of the security deposit wrongfully withheld from the tenant, together with reasonable attorney's fees and court costs. [1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. B, §10 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

C. In any court action brought by a tenant under this section, the mobile home park operator has the burden of proving that the operator's withholding of the security deposit, or any portion of it, was not wrongful. [1987, c. 737, Pt. B, §1 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

[ 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. B, §10 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD); 1989, c. 502, Pt. A, §32 (AMD) .]

**4. Return of security deposit to renter.** Notwithstanding the definition of "tenant" in section 9091, subsection 5, this section applies to a person who rents a mobile home and rents the mobile home park lot on which the mobile home is located and from whom a mobile home park operator collects a security deposit.

[ 1991, c. 661, §1 (NEW) .]

**5. Security deposits.** During the term of a tenancy, a security deposit given to a mobile home park operator as part of a residential rental agreement may not be treated as an asset to be commingled with the assets of the landlord. All security deposits must be held in an account of a bank or other financial institution under terms that place the security deposit beyond the claim of creditors of the mobile home park operator, including a foreclosing mortgagee or trustee in bankruptcy, and that provide for transfer of the security deposit to a subsequent mobile home park operator. Upon the transfer of the mobile home park, the new operator shall assume all responsibility for maintaining and returning to tenants all security deposits accounted for and transferred. Upon request by a tenant, a landlord shall disclose the name of the financial institution and the account number where the security deposit is being held. A mobile home park operator may use a single escrow account to hold security deposits from all of the tenants of the mobile home park.

[ 2009, c. 128, §2 (NEW) .]

#### SECTION HISTORY

1987, c. 737, §§B1,C106 (NEW). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§B10,C8,C10 (AMD). 1989, c. 502, §A32 (AMD). 1991, c. 661, §§1,2 (AMD). 2009, c. 128, §§1, 2 (AMD).

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