

President's Message

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AB12, the new security deposit law which will go into effect on July 1, 2024.

Housing providers, since COVID, have felt the rental landscape shift beneath their feet. Now, there will be a new law set to revolutionize security deposits and its implications are vast.

Going into effect on July 1, 2024 is AB12 signed into law by Governor Gavin Newsom in November concerning security deposits so that California is joining 11 other states that have a one month's rent security deposit limitation.

As you all know, existing law prohibits a housing provider from demanding or receiving security for a rental agreement for residential property, however denominated, in an amount or value in excess of an amount equal to 2 months' rent, in the case of unfurnished residential property, and an amount equal to 3 months' rent, in the case of furnished residential property, in addition to the first month's rent. In 2019, a limitation of one month's rent was added for active service members.

There is an exemption for "small landlords" owning no more than two rental units totaling no more than four units TOTAL. In order to take advantage of this exemption, the owner must be a natural person or a limited liability corporation in which all members are natural persons. The statute defines natural persons to include: "any natural person who is a settlor or beneficiary of a family trust" and defines "Family Trust" as "a revocable living trust or irrevocable trust in which the settlors and beneficiaries of the trust are natural persons who are related to each other as sibling, spouse, domestic partner, child, parent, grandparent, or grandchild." It is interesting that the legislature chose the term "limited liability corporation" rather than "limited liability company" because the post-COVID statutes have always excluded "corporations" from exemption. I believe this is a mistake on the part of the scrivener for the Bill but we shall see. In any event, they do go on to define it as stated. This exemption is not effective if renting to active service members. If the exemption applies to you, you are governed by the state law stated in the third paragraph above.

This law does not apply retroactively. So, security deposits received prior to July 1, 2024 do not have to be refunded. The new law says: "This subdivision shall not apply to a security collected or demanded by the landlord before July 1, 2024." Does that mean you

can charge the old amounts if you just collect it before July 1st even if the Lease starts July 1st? That seems unclear but you would have to be the test case.

This law says ANY "payment, fee, deposit, or charge, including but not limited to any payment, fee, deposit, or charge, except as provided in Section 1950.6, that is imposed at the beginning of the tenancy" to be used for defaults in rent, cleaning or repair. Therefore, no deposit beyond that amount may be charged for a pet deposit. As always, no separate security deposit has been allowed for Emotional Support Animals ("ESA's") or Trained Service Animals ("TSA's"). As a reminder, Civil Code Section 1950.6 governs application fees. So, they are not included in this. The limitation of one month's rent is in addition to the payment for the first month's rent since this is considered a payment for immediate use to pay for that first month's rent and is not considered a "deposit."

"This subdivision does not prohibit an advance payment of not less than six months' rent if the term of the lease is six months or longer." Be careful, this is rent, not a deposit. It is to be used for rent and cannot be held until the end of the term just in case of a default.

Stay tuned for next month's President's message where I will be discussing, among other things, the new workplace violence prevention plan which many of you will be forced to have in place by July 1, 2024. This includes property management companies.

As always, we thank you for your membership, your participation and your valuable input.

On Memorial Day, remember and honor those who have served in the armed forces.

Betty L. Jeppesen, President SBRPA



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