

LEASE SECURITY AND ADVANCES

McKinney's General Obligations Law § 7-101

§ 7-101. Money deposited or advanced for use or rental of personal property; waiver void

1. Whenever money shall be deposited or advanced on a contract for the use or rental of personal property as security for performance of the contract or to be applied to payments upon such contract when due, such money, with interest accruing thereon, if any, until repaid or so applied, shall continue to be the money of the person making such deposit or advance and shall be a trust fund in the possession of the person with whom such deposit or advance shall be made and shall be deposited in a bank or trust company and shall not be mingled with other funds or become an asset of such trustee, excepting, however, that such trust funds may be deposited with other funds that have been deposited or advanced to the trustee as security for performance of a contract for the use or rental of personal property or be applied to payments upon such contract when due. If the money being deposited or advanced is for the use or rental of personal property and the money deposited or advanced is seven hundred fifty dollars or more and is for the use or rental of personal property for a period equal to or greater than one hundred twenty days, the person receiving such money shall deposit it pursuant to the provisions of subdivision one-a of this section.

1-a. Whenever the money so deposited or advanced is seven hundred fifty dollars or more and is for the use or rental of personal property for a period equal to or greater than one hundred twenty days, the person receiving such money shall, subject to the provisions of this section, deposit it in an interest bearing account in a banking organization within the state which account shall earn interest at a rate which shall be the prevailing rate earned by other such deposits made with banking organizations in such area. Such person shall not be required to keep the funds of the separate persons from whom security deposits or advances have been received in separate depository accounts, provided his books of account shall clearly show the allocation of the funds deposited in his general or special depository account. The person depositing such security money shall be entitled to receive, as administration expenses, a sum equivalent to one per cent per annum upon the security money so deposited, which shall be deducted from the interest earned on such security money from the banking organization and shall be in lieu of all other administrative and custodial expenses relating to the security deposit or advance. The balance of the interest paid by the banking organization shall be the money of the lessee making the deposit or advance and shall either be held in trust by the person with whom such deposit or advance shall be made, until repaid or applied

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for the use or rental of the personal property, or annually paid to the lessee making the deposit of security money.

1-b. This section shall not be applicable to any advance payment of money under or with respect to any contract for the use or rental of personal property that, in accordance with the terms applicable to such payment, either (a) is not revocable by the person making such payment and is not otherwise subject to being returned or refunded to such person, or (b) otherwise satisfies or discharges an equivalent liability under such contract when such payment is made, whether or not such liability is otherwise then due and payable under the terms of such contract.

1-c. This section shall apply to money deposited or advanced on contracts for the use or rental of personal property as security for performance of the contract or to be applied to payments upon such contract when due, only if (a) such contract is governed by the laws of this state as the result of a choice of law provision in such contract, in accordance with section 1-105 of the uniform commercial code (subject to the limitations on choice of law by the parties to a consumer lease under section 2-A-106 of the uniform commercial code), or such contract is otherwise governed by the laws of this state in accordance with applicable conflict of laws rules, and (b) the lessee under such contract is located within this state, within the meaning of the uniform commercial code (with respect to the location of debtors), except that a foreign air carrier under the Federal Aviation Act of 1958, as amended,¹ shall not be deemed located in this state solely as a result of having a designated office of an agent upon whom service of process may be made located in this state.

2. Any provision of a contract whereby a person who has deposited or advanced money on a contract for the use or rental of personal property as security for the performance of the contract waives any provision of this section is absolutely void.

3. This section shall not be applicable to any deposit or advance of money made in connection with the borrowing of securities for any lawful purpose.

McKinney's General Obligations Law § 7-103

§ 7-103. Money deposited or advanced for use or rental of real property; waiver void; administration expenses

1. Whenever money shall be deposited or advanced on a contract or license agreement for the use or rental of real property as security for performance of the contract or agreement or to be applied to payments upon such contract or agreement when due, such money, with interest accruing thereon, if any, until repaid or so applied, shall continue to be the money of the person making such deposit or advance and shall be held in trust by the person with whom such deposit or advance shall be made and shall not be mingled with the personal moneys or become an asset of the person receiving the same, but may be disposed of as provided in section 7-105 of this chapter.

2. Whenever the person receiving money so deposited or advanced shall deposit such money in a banking organization, such person shall thereupon notify in writing each of the persons making such security deposit or advance, giving the name and address of the banking organization in which the deposit of security money is made, and the amount of such deposit. Deposits in a banking organization pursuant to the provisions of this subdivision shall be made in a banking organization having a place of business within the state. If the person depositing such security money in a banking organization shall deposit same in an interest bearing account, he shall be entitled to receive, as administration expenses, a sum equivalent to one per cent per annum upon the security money so deposited, which shall be in lieu of all other administrative and custodial expenses. The balance of the interest paid by the banking organization shall be the money of the person making the deposit or advance and shall either be held in trust by the person with whom such deposit or advance shall be made, until repaid or applied for the use or rental of the leased premises, or annually paid to the person making the deposit of security money.

2-a. Whenever the money so deposited or advanced is for the rental of property containing six or more family dwelling units, the person receiving such money shall, subject to the provisions of this section, deposit it in an interest bearing account in a banking organization within the state which account shall earn interest at a rate which shall be the prevailing rate earned by other such deposits made with banking organizations in such area.

2-b. In the event that a lease terminates other than at the time that a banking organization in such area regularly pays interest, the person depositing such security money shall pay over to his tenant such interest as he is able to collect at the date of such lease termination.

3. Any provision of such a contract or agreement whereby a person who so deposits or advances money waives any provision of this section is absolutely void.

4. The term "real property" as used in this section is co-extensive in meaning with lands, tenements and hereditaments.

McKinney's General Obligations Law § 7-105

§ 7-105. Landlord failing to turn over deposits made by tenants or licensees and to notify tenants or licensees thereof in certain cases

1. Any person, firm or corporation and the employers, officers or agents thereof, whether the owner or lessee of the property leased, who or which has or hereafter shall have received from a tenant or licensee a sum of money or any other thing of value as a deposit or advance of rental as security for the full performance by such tenant or licensee of the terms of his lease or license agreement, or who or which has or shall have received the same from a former owner or lessee, shall, upon conveying such property or assigning his or its lease to another, or upon the judicial appointment and qualifying of a receiver in an action to foreclose a mortgage or other lien of record affecting the property leased, or upon the conveyance of such property to another person, firm or corporation by a referee in an action to foreclose a mortgage or other lien of record affecting the property leased if a receiver shall not have been appointed and qualified in such action, at the time of the delivery of the deed or instrument or assignment or within five days thereafter, or within five days after the receiver shall have qualified, deal with the security deposit as follows:

Turn over to his or its grantee or assignee, or to the receiver in the foreclosure action, or to the purchaser at the foreclosure sale if a receiver shall not have been appointed and qualified the sum so deposited, and notify the tenant or licensee by registered or certified mail of such turning over and the name and address of such grantee, assignee, purchaser or receiver.

2. Any owner or lessee turning over to his or its grantee, assignee, to a purchaser of the leased premises at a foreclosure sale, or to the receiver in the foreclosure action the amount of such security deposit is hereby relieved of and from liability to the tenant or licensee for the repayment thereof; and the transferee of such security deposit is hereby made responsible for the return thereof to the tenant or licensee, unless he or it shall thereafter and before the expiration of the term of the tenant's lease or licensee's agreement, transfer such security deposit to another, pursuant to subdivision one hereof and give the requisite notice in connection therewith as provided thereby. A receiver shall hold the security subject to such disposition thereof as shall be provided in an order of the court to be made and entered in the foreclosure action. The provisions of this section shall not apply if the agreement between the landlord and tenant or licensee is inconsistent herewith.

3. Any failure to comply with this section is a misdemeanor.

McKinney's General Obligations Law § 7-106

§ 7-106. Money deposited or advanced for certain installations; waiver void

1. Whenever any non-public moneys shall be deposited or advanced by the owner of an occupied residential dwelling on a contract for the installation of a private connection to a public sewer line as security for payments or to be applied to payments upon such contract when due, such money, with interest accruing thereon, if any, until repaid or so applied, shall continue to be the money of the person making such deposit or advance and shall be a trust fund in the possession of the person with whom such deposit or advance shall be made and shall be deposited in a bank, trust company, savings bank, savings and loan association, federal savings and loan association or federal mutual savings bank and shall not be mingled with other funds or become an asset of such trustee.
2. Any provision of a contract whereby a person who has deposited or advanced money on a contract for the installation of a private connection to a public sewer line as security for payments or to be applied to payments upon such contract when due waives any provision of this section is absolutely void.

McKinney's General Obligations Law § 7-107

§ 7-107. Liability of a grantee or assignee for deposits made by tenants upon conveyance of rent stabilized dwelling units

1. This section shall apply only to dwelling units subject to the New York city rent stabilization law of nineteen hundred sixty-nine¹ or the emergency tenant protection act of nineteen seventy-four.²

2. (a) Any grantee or assignee of any dwelling unit referred to in subdivision one of this section shall be liable to a tenant for any sum of money or any other thing of value deposited as security for the full performance by such tenant of the terms of his lease, plus any accrued interest, if his or its predecessor in interest was liable for such funds. Such liability shall attach whether or not the successor in interest has, upon the conveyance of such dwelling unit, received the sum as deposited.

(b) The liability of a receiver for payment of any security deposit plus accrued interest pursuant to this subdivision shall be limited to the amount of such deposit actually turned over to him or it pursuant to subdivision one of section 7-105 of this chapter and to the operating income in excess of expenses generated during his or its period of receivership.

3. Any agreement by a lessee or tenant of a dwelling unit waiving or modifying his rights as set forth in this section shall be void.

McKinney's General Obligations Law § 7-108

§ 7-108. Liability of a grantee or assignee for deposits made by tenants upon conveyance of non-rent stabilized dwelling units

1. This section shall apply to all dwelling units with written leases in residential premises containing six or more dwelling units and to all dwelling units subject to the city rent and rehabilitation law¹ or the emergency housing rent control law,² unless such dwelling unit is specifically referred to in section 7-107 of this chapter.

2. (a) In circumstances where any sum of money or any other thing of value deposited as security for the full performance by a tenant of the terms of his lease is not turned over to a successor in interest pursuant to section 7-105 of this chapter, the grantee or assignee of the leased premises shall also be liable to such tenant, upon conveyance of such leased premises, for the repayment of any such security deposit, plus accrued interest, as to which such grantee or assignee has actual knowledge.

(b) For purposes of this section, a grantee or assignee of the leased premises shall be deemed to have actual knowledge of any security deposit which is (i) deposited at any time during the six months immediately prior to closing or other transfer of title in any banking organization pursuant to subdivision two-a of section 7-103 of this chapter, or (ii) acknowledged in any lease in effect at the time of closing or other transfer of title, or (iii) supported by documentary evidence provided by the tenant or lessee as set forth in paragraph (c) of this subdivision.

(c) With respect to any leased premises for which there is no record of security deposit pursuant to subparagraph (i) or (ii) of paragraph (b) of this subdivision, the grantee or assignee of the leased premises shall be obligated to notify the tenant thereof in writing no later than thirty days following the closing or other transfer of title to the fact that there is no record of a security deposit for said leased premises and that unless the tenant within thirty days after receiving notice provides him or it with documentary evidence of deposit, the tenant shall have no further recourse against him or it for said security deposit. For purposes of this subdivision, "documentary evidence" shall be limited to any cancelled check drawn to the order of, a receipt from, or a lease signed by any predecessor in interest, if such predecessor's interest in the leased premises existed on or after the effective date of this section. Except as otherwise provided by subparagraphs (i) and (ii) of paragraph (b) of this subdivision the grantee or assignee of the leased premises shall not be charged with actual knowledge of the security deposit where the tenant fails within the thirty-day period to provide said documentary evidence. Where the grantee or assignee of the leased premises fails to notify the tenant as specified in this paragraph within thirty days following the closing or other transfer of title, the tenant shall be entitled to produce documentary evidence at any time.

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(d) The grantee or assignee of the leased premises shall have the right to demand that the grantor or assignor thereof establish an escrow account equal to one month's rent for any leased premises for which there is no record of a security deposit pursuant to paragraph (b) of this subdivision to be used for the purpose of holding harmless the grantee or assignee in any case where, at a date subsequent to the closing or other transfer of title, the tenant gives notice pursuant to paragraph (c) of this subdivision.

(e) The liability of a receiver for payment of any security deposit plus accrued interest pursuant to this subdivision shall be limited to the amount of such deposit actually turned over to him or it pursuant to subdivision one of section 7-105 of this chapter and to the operating income in excess of expenses generated during his or its period of receivership.

3. Any agreement by a lessee or tenant of a dwelling waiving or modifying his rights as set forth in this section shall be absolutely void.

McKinney's General Obligations Law § 7-109

§ 7-109. Commencement of a proceeding or action by the attorney general to compel compliance

If it appears to the attorney general that any person, association, or corporation has violated or is violating any of the provisions of this title, an action or proceeding may be instituted by the attorney general in the name of the people of the state of New York to compel compliance with such provisions and enjoin any violation or threatened violation thereof.

In connection with the institution of any such action or proceeding, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

If in such action or proceeding, the court finds that a respondent has committed such violation the court in its discretion may award to the attorney general a sum not exceeding two thousand dollars with respect to each such respondent as costs of investigation.