

P.L. 2003, CHAPTER 188, *approved October 1, 2003*  
Assembly Bill No. 2608 (*First Reprint*)

1 AN ACT concerning <sup>1</sup>[interest on] tenant<sup>1</sup> security deposits  
2 <sup>1</sup>[and] <sup>1</sup>amending P.L. 1967, c. 265 <sup>1</sup>and P.L.1971, c.223 and  
3 supplementing chapter 8 of Title 46 of the Revised Statutes<sup>1</sup>.  
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:  
7

8 1. Section 1 of P.L.1967, c.265 (C.46:8-19) is amended to read as  
9 follows:

10 1. Whenever money or other form of security shall be deposited or  
11 advanced on a contract, lease or license agreement for the use or  
12 rental of real property as security for performance of the contract,  
13 lease or agreement or to be applied to payments upon such contract,  
14 lease or agreement when due, such money or other form of security,  
15 until repaid or so applied including the tenant's portion of the interest  
16 or earnings accumulated thereon as hereinafter provided, shall  
17 continue to be the property of the person making such deposit or  
18 advance and shall be held in trust by the person with whom such  
19 deposit or advance shall be made for the use in accordance with the  
20 terms of the contract, lease or agreement and shall not be mingled with  
21 the personal property or become an asset of the person receiving the  
22 same.

23 The person receiving money so deposited or advanced shall:

24 a. (1) Invest that money in shares of an insured money market  
25 fund established by an investment company based in this State and  
26 registered under the "Investment Company Act of 1940," 54 Stat. 789  
27 (15 U.S.C.s.80a-1 et seq.) whose shares are registered under the  
28 "Securities Act of 1933," 48 Stat. 74 (15 U.S.C.s.77a. et seq.) and the  
29 only investments of which fund are instruments maturing in one year  
30 or less, or (2) deposit that money in a State or federally chartered  
31 bank, savings bank or savings and loan association in this State insured  
32 by an agency of the federal government in an account bearing a  
33 variable rate of interest, which shall be established at least quarterly,  
34 which is similar to the average rate of interest on active  
35 interest-bearing money market transaction accounts paid by the bank  
36 or association <sup>1</sup>[under 12 C.F.R. Part 1204.108]<sup>1</sup>, or equal to similar  
37 accounts of an investment company described in paragraph (1) of this  
38 subsection<sup>1</sup> [, less an amount not to exceed 1% per annum of the  
39 amount so invested or deposited for the costs of servicing and

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> Assembly AHO committee amendments adopted March 10, 2003.

1 processing the account]<sup>1</sup>.

2 This subsection shall not apply to persons receiving money for less  
3 than 10 rental units except where required by the Commissioner of  
4 Banking and Insurance by rule or regulation. The commissioner shall  
5 apply the provisions of this subsection to some or all persons receiving  
6 money for less than 10 rental units where the commissioner finds that  
7 it is practicable to deposit or invest the money received with an  
8 investment company or State or federally chartered bank, savings bank  
9 or savings and loan association in accordance with this subsection.  
10 Except as expressly provided herein, nothing in this subsection shall  
11 affect or modify the rights or obligations of persons receiving money  
12 for rental premises or units, tenants, licensees or contractees under any  
13 other law.

14 b. Persons not required to invest or deposit money in accordance  
15 with subsection a. of this section shall deposit such money in a State  
16 or federally chartered bank, savings bank or savings and loan  
17 association in this State insured by an agency of the federal  
18 government in an account bearing interest at the rate currently paid by  
19 such institutions and associations on time or savings deposits.

20 c. The person investing the security deposit pursuant to subsection  
21 a. or b. of this section shall [thereupon] notify in writing each of the  
22 persons making such security deposit or advance, giving the name and  
23 address of the investment company, State or federally chartered bank,  
24 savings bank or savings and loan association in which the deposit or  
25 investment of security money is made, the type of account in which the  
26 security deposit is deposited or invested, the current rate of interest  
27 for that account, and the amount of such deposit or investment, in  
28 accordance with the following:

29 (1) within 30 days of the receipt of the security deposit from the  
30 tenant;

31 (2) within 30 days of moving the deposit from one depository  
32 institution or fund to another<sup>1</sup>, except in the case of a merger of  
33 institutions or funds, then within 30 days of the date the person  
34 investing the security deposit receives notice of that merger<sup>1</sup>, or from  
35 one account to another account,<sup>1</sup>if the change in the account or  
36 institution occurs more than 60 days prior to the annual interest  
37 payment<sup>1</sup>;

38 (3) within 30 days after the effective date of P.L. \_\_\_\_\_, c.  
39 (C. \_\_\_\_\_) (now before the Legislature as this bill); <sup>1</sup>[and]<sup>1</sup>

40 (4) at the time of each annual interest payment<sup>1</sup>; and

41 (5) within 30 days after the transfer or conveyance of ownership  
42 or control of the property pursuant to section 2 of P.L.1967, c.265  
43 (C.46:8-20)<sup>1</sup>.

44 All of the money so deposited or advanced may be deposited or  
45 invested by the person receiving the same in one interest-bearing or  
46 dividend yielding account as long as he complies with all the other

1 requirements of this act.

2 [The person receiving money so deposited or so advanced shall be  
3 entitled to receive as administrative expenses, a sum equivalent to 1%  
4 per annum thereon or 12.5% of the aggregate interest yield on the  
5 security deposit, whichever is greater, less the amount of any service  
6 fee charged by an investment company, a State or federally chartered  
7 bank, savings bank or savings and loan association for money  
8 deposited pursuant to this section, which shall be in lieu of all other  
9 administrative and custodial expenses.] The [balance of the] interest  
10 or earnings paid thereon by the investment company, State or federally  
11 chartered bank, savings bank or savings and loan association,  
12 [hereinafter referred to as tenant's portion,] shall belong to the person  
13 making the deposit or advance and shall be [permitted to compound  
14 to the benefit of the tenant, or be] paid to the tenant in cash[, or be  
15 credited toward the payment of rent due]<sup>1</sup>, or be credited toward the  
16 payment of rent due<sup>1</sup> on the renewal or anniversary of said tenant's  
17 lease <sup>1</sup>or on January 31, if the tenant has been given written notice  
18 after the effective date of P.L. , c. (now before the Legislature as  
19 this bill) and before the next anniversary of the tenant's lease, that  
20 subsequent interest payments will be made on January 31 of each  
21 year<sup>1</sup>.

22 [In the event] If the person receiving a security deposit fails to  
23 invest or deposit the security money in the manner required under this  
24 section or [notify the tenant of the name and address of the investment  
25 company, State or federally chartered bank, savings bank or savings  
26 and loan association in which the deposit or investment of such  
27 security is made, and the amount thereof, within 30 days after receipt  
28 of same from the tenant, or within 30 days after the effective date of  
29 this 1990 amendatory act, whichever occurs later,] to provide the  
30 notice or pay the interest to the tenant as required under this  
31 subsection, the tenant may give written notice to [the] that person  
32 [receiving the same] that such security money plus an amount  
33 representing interest at the rate of seven percent per annum be applied  
34 on account of rent payment or payments due or to become due from  
35 the tenant, and thereafter the tenant shall be without obligation to  
36 make any further security deposit and the person receiving the money  
37 so deposited shall not be entitled to make further demand for a  
38 security deposit. <sup>1</sup>However, in the case of a failure by the person  
39 receiving the security deposit to pay the annual interest or to provide  
40 the annual notice at the time of the annual interest payment, if the  
41 annual notice is not also serving as a notice of change of account or  
42 institution, before the tenant may apply the security deposit plus  
43 interest on account of the rent payment or payments due or to become  
44 due on the part of the tenant, the tenant shall first give that person a  
45 written notice of his failure and shall allow that person 30 days from

1 the mailing date or hand delivery of this notice to comply with the  
2 annual interest payment or annual notice, or both.<sup>1</sup>

3 d. The provisions of this section requiring that the security  
4 advanced be deposited or invested in a money market fund, or in an  
5 interest bearing account in a State or federally chartered bank, savings  
6 bank or savings and loan association shall not apply to any security  
7 advanced on a contract, lease or license agreement for the seasonal use  
8 or rental of real property. For purposes of this paragraph "seasonal  
9 use or rental" means use or rental for a term of not more than  
10 125 consecutive days for residential purposes by a person having a  
11 permanent place of residence elsewhere. "Seasonal use or rental" does  
12 not mean use or rental of living quarters for seasonal, temporary or  
13 migrant farm workers in connection with any work or place where  
14 work is being performed. The landlord shall have the burden of  
15 proving that the use or rental of the residential property is seasonal.  
16 (cf: P.L.1997, c.310, s.1)

17

18 2. Section 2 of P.L. 1967, c. 265 (C.46:8-20) is amended to read  
19 as follows:

20 2. Any person, whether the owner or lessee of the property leased,  
21 who or which has or hereafter shall have received from a tenant or  
22 licensee a sum of money as a deposit or advance of rental as security  
23 for the full performance by such tenant or licensee of the terms of his  
24 contract, lease or license agreement, or who or which has or shall have  
25 received the same from a former owner or lessee, shall, upon  
26 conveying such property or assigning his or its lease to another, or  
27 upon the conveyance of such property to another person by a court in  
28 an action to foreclose a mortgage thereon, at the time of the delivery  
29 of the deed or instrument of assignment, or within five days thereafter,  
30 or in the event of the insolvency or bankruptcy of the person receiving  
31 said deposit, within five days after the making and entry of an order of  
32 the court discharging the receiver or trustee, deal with the security  
33 deposit by turning over to his or its grantee or assignee, or to the  
34 purchaser at the foreclosure sale the sum so deposited, plus the  
35 tenant's portion of the interest or earnings accumulated thereon, and  
36 notify the tenant or licensee by registered or certified mail of such  
37 turning over and the name and address of such grantee, assignee or  
38 purchaser. Notwithstanding any other provision of law to the  
39 contrary, it shall be the duty and obligation of the grantee, assignee or  
40 purchaser to obtain from the grantor who is the owner or lessee at the  
41 time of the transfer, conveyance or purchase any and all security  
42 deposits, plus accrued interest on the deposits, that the owner or  
43 lessee received from a tenant, licensee or previous owner or lessee,  
44 and which deposits were invested, or should have been invested, in the  
45 manner required by section 1 of P.L. 1967, c. 265 (C.46:8-19).  
46 (cf: P.L.1985, c.42, s.2)

1       3. Section 3 of P.L.1967, c.265 (C.46:8-21) is amended to read as  
2 follows:

3       3. Any owner or lessee turning over to his or its grantee, assignee,  
4 or to a purchaser of the leased premises at a foreclosure sale the  
5 amount of such security deposit, plus the tenant's portion of the  
6 interest or earnings accumulated thereon, is hereby relieved of and  
7 from liability to the tenant or licensee for the repayment thereof [; and  
8 the transferee of such security deposit, plus the tenant's portion of the  
9 interest or earnings accumulated thereon,]. Whether or not the  
10 deposit plus accumulated interest are so transferred, the grantee,  
11 assignee or purchaser of the leased premises is [hereby made]  
12 nevertheless responsible for <sup>1</sup>the proper investment of the security  
13 deposit, giving all notices and paying interest pursuant to section 1 of  
14 P.L.1967, c.265 (C.46:8-19) and for<sup>1</sup> the return [thereof] of the  
15 security deposit, plus any accumulated earnings or interest thereon, to  
16 the tenant or licensee, in accordance with the terms of the contract,  
17 lease, or agreement unless he or it shall thereafter and before the  
18 expiration of the term of the tenant's lease or licensee's agreement,  
19 transfer such security deposit to another, pursuant to section 2  
20 [hereof] of P.L.1967, c.365 (C.46:8-20) and give the requisite notice  
21 in connection therewith as provided thereby.

22 (cf: P.L.1985, c.42, s.3)

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24       <sup>1</sup>4. Section 3 of P.L.1971, c.223 (C.46:8-21.1) is amended to read  
25 as follows:

26       3. Within 30 days after the termination of the tenant's lease or  
27 licensee's agreement, the owner or lessee shall return by personal  
28 delivery, registered or certified mail the sum so deposited plus the  
29 tenant's portion of the interest or earnings accumulated thereon, less  
30 any charges expended in accordance with the terms of a contract,  
31 lease, or agreement, to the tenant or licensee, or, in the case of a lease  
32 terminated pursuant to P.L.1971, c.318 (C.46:8-9.1), the executor or  
33 administrator of the estate of the tenant or licensee or the surviving  
34 spouse of the tenant or licensee so terminating the lease. The interest  
35 or earnings and any such deductions shall be itemized and the tenant,  
36 licensee, executor, administrator or surviving spouse notified thereof  
37 by personal delivery, registered or certified mail. Notwithstanding the  
38 provisions of this or any other section of law to the contrary, no  
39 deductions shall be made from a security deposit of a tenant who  
40 remains in possession of the rental premises.

41       Within five business days after a. the tenant is caused to be  
42 displaced by fire, flood, condemnation, or evacuation, and b. an  
43 authorized public official posts the premises with a notice prohibiting  
44 occupancy, or c. any building inspector, in consultation with a  
45 relocation officer, where applicable, has certified within 48 hours that  
46 displacement is expected to continue longer than seven days and has

1 so notified the owner or lessee in writing, the owner or lessee shall  
2 have available and return to the tenant or the tenant's designated agent  
3 upon his demand the sum so deposited plus the tenant's portion of the  
4 interest or earnings accumulated thereon, less any charges expended  
5 in accordance with the terms of the contract, lease or agreement and  
6 less any rent due and owing at the time of displacement.

7 Such net sum shall continue to be available to be returned upon  
8 demand during normal business hours for a period of 30 days at a  
9 location in the same municipality in which the subject leased property  
10 is located and shall be accompanied by an itemized statement of the  
11 interest or earnings and any deductions. The owner or lessee may, by  
12 mutual agreement with the municipal clerk, have the municipal clerk  
13 of the municipality in which the subject leased property is located  
14 return said net sum in the same manner. Within three business days  
15 after receiving notification of the displacement, the owner or lessee  
16 shall provide written notice to a displaced tenant by personal delivery  
17 or mail to the tenant's last known address. Such notice shall include,  
18 but not be limited to, the location at which and the hours and days  
19 during which said net sum shall be available to him. The owner or  
20 lessee shall provide a duplicate notice in the same manner to the  
21 relocation officer. Where a relocation officer has not been designated,  
22 the duplicate notice shall be provided to the municipal clerk. When  
23 the last known address of the tenant is that from which he was  
24 displaced and the mailbox of that address is not accessible during  
25 normal business hours, the owner or lessee shall also post such notice  
26 at each exterior public entrance of the property from which the tenant  
27 was displaced. Any such net sum not demanded by and returned to the  
28 tenant or the tenant's designated agent within the period of 30 days  
29 shall be redeposited or reinvested by the owner or lessee in an  
30 appropriate interest bearing or dividend yielding account in the same  
31 investment company, State or federally chartered bank, savings bank  
32 or savings and loan association from which it was withdrawn. In the  
33 event that said displaced tenant resumes occupancy of the premises,  
34 said tenant shall redeliver to the owner or lessee one-third of the  
35 security deposit immediately, one-third in 30 days and one-third 60  
36 days from the date of reoccupancy. Upon the failure of said tenant to  
37 make such payments of the security deposit, the owner or lessee may  
38 institute legal action for possession of the premises in the same manner  
39 that is authorized for nonpayment of rent.

40 In any action by a tenant, licensee, executor, administrator or  
41 surviving spouse for the return of moneys due under this section, the  
42 court upon finding for the tenant, licensee, executor, administrator or  
43 surviving spouse shall award recovery of double the amount of said  
44 moneys, together with full costs of any action and, in the court's  
45 discretion, reasonable attorney's fees.<sup>1</sup>  
46 (cf: P.L.1985, c.317, s.1)

1       <sup>1</sup>5. Section 4 of P.L.1971, c.223 (C.46:8-21.2) is amended to read  
2 as follows:

3       4. An owner or lessee may not require more than a sum equal to 1  
4 1/2 times 1 month's rental according to the terms of contract, lease, or  
5 agreement as a security for the use or rental of real property used for  
6 dwelling purposes. Whenever an owner or lessee collects from a  
7 tenant an additional amount of security deposit, the amount collected  
8 annually as additional security shall not be greater than 10 percent of  
9 the current security deposit.<sup>1</sup>

10 (cf: P.L.1971, c.223, s.4)

11

12       <sup>1</sup>6. (New section) Notwithstanding any law or rule to the contrary,  
13 the Division of Small Claims of the Superior Court, Law Division,  
14 Special Civil Part shall have jurisdiction of actions between an owner  
15 or lessee and tenant for the return of all or a part of a security deposit  
16 in which the amount in dispute, including any applicable penalties,  
17 does not exceed the sum of \$5,000, exclusive of costs.<sup>1</sup>

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19       <sup>1</sup>[4.] 7.<sup>1</sup> This act shall take effect on the first day of the third  
20 month after enactment.

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Makes various changes to tenant security deposit laws.